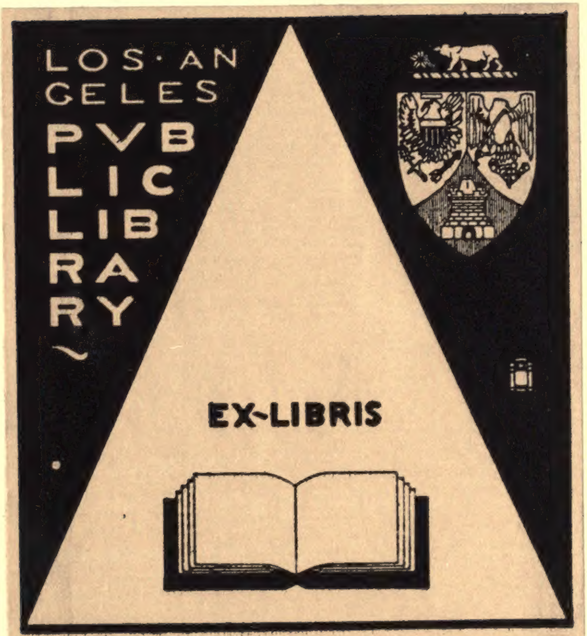

R 353.9747 N565 v.6

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STATE OF NEW YORK

MESSAGES FROM THE GOVERNORS

COMPRISING

Executive Communications to the Legislature and Other
Papers Relating to Legislation from the Organization
of the First Colonial Assembly in 1683 to
and Including the Year 1906

WITH NOTES

EDITED BY CHARLES Z. LINCOLN

PUBLISHED BY AUTHORITY OF THE STATE

R 353.9747 N565 v.6

VOLUME VI

1869-1876

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PREFACE.

178136
MAR 8 1910

The growth of executive business keeps pace with the development of the State. The preceding volume included the administration of four governors. This volume covers eight years and includes the administrations of three governors — Hoffman, Dix and Tilden.

This period witnessed the adoption in 1869 of the new judiciary article proposed by the Constitutional Convention of 1867, which was the only part of the work of that Convention approved by the people. The failure of the work of the convention resulted in the Constitutional Commission of 1872, which proposed numerous separate amendments to the Constitution, most of which were submitted to the people and approved in 1874.

During the years covered by this volume much attention was given by governors and others to the subject of municipal reform. New York city received a new charter, and in 1875 the Legislature created a commission to investigate the subject of municipal administration. There was also at this time an investigation of canal affairs, which resulted in important changes in administration, notably the amendment of 1876 creating the office of superintendent of public works. Prison administration was also reorganized by the creation of the office of superintendent of State prisons, and the abolition of the office of inspector.

The amendments of 1874 contained numerous restrictions on the powers of the Legislature, especially in relation to the enactment of local laws. These amendments also established a period of thirty days for executive consideration of bills after the adjournment of the Legislature, and provided for the veto of separate items in appropriation bills.

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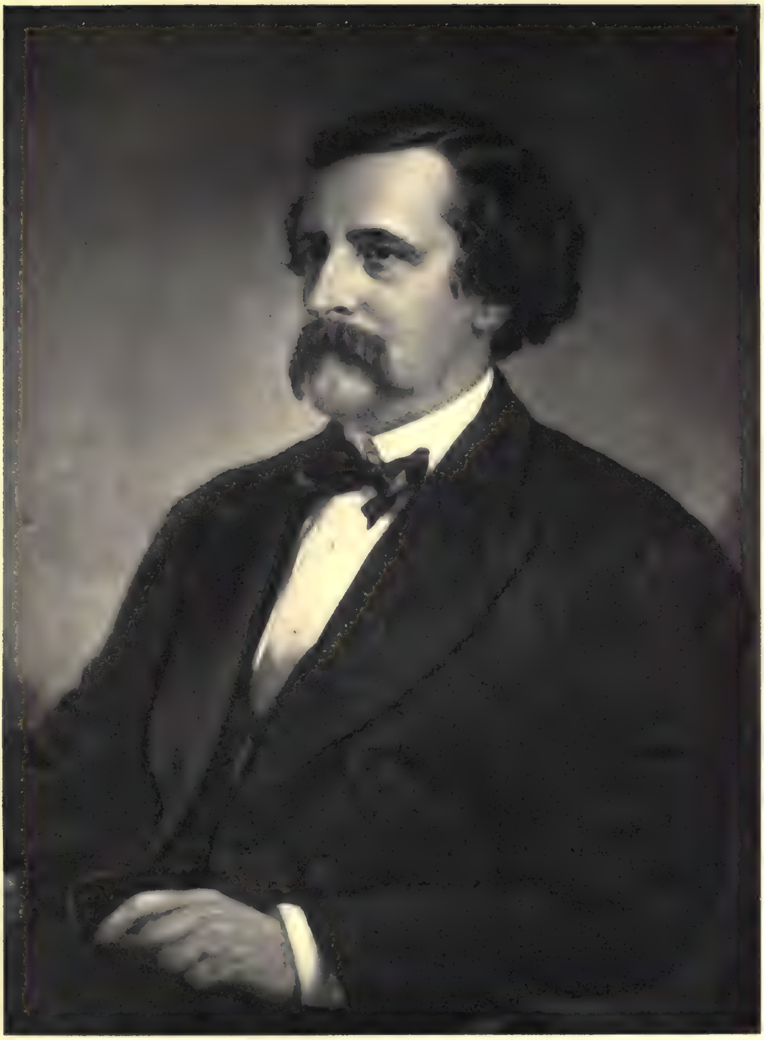

John T Hoffman

MESSAGES FROM THE GOVERNOR.

1869. JANUARY 5. LEGISLATURE. NINETY-SECOND SESSION.

JOHN T. HOFFMAN, Governor.

ANNUAL MESSAGE.

Executive Chamber,
Albany, *January* 5, 1869.

To the Legislature.—Having been elected to the highest office in the gift of the people of the State, I have taken the oath required by the Constitution,[a] impressed with a due sense of my responsibilities, yet indulging the confident hope that by the blessing and favor of Almighty God, who disposes all things, I shall be able so to discharge my duties as to command the approval of my constituents and to promote the welfare of the State. I am not unaware of the embarrassments which surround me. I am here to administer and to execute important public trusts; to reconcile and adjust conflicting interests as great as they are varied; to overcome or moderate sectional prejudices and jealousies, which may exist within our own territory; to preserve public order; to protect the public works; to endeavor to reduce expenditures, taxation and debt; and to assert and maintain the rights of the State and defend the interests of its citizens.

The fact that neither branch of the Legislature is in political sympathy with the Executive may seem to be an obstacle in the way of the accomplishment of these ends. Relying, however, upon your intelligence and patriotism, trusting that you will rise, as I shall strive to do, above all party prejudices and differences, I am ready, with all the ability and energy I possess, to unite with you, as I trust you will unite with me, in every effort to secure to those whose representatives we are, the blessings of an economical, a prudent and a wise government. We cannot be unmindful of the greatness of our State, and the magnitude, variety and importance of its interests and resources. Containing, as it does, more than four millions of people, among whom are represented every nation and every creed; extending, as it does, from the ocean to the great inland lakes, over an area of more than fifty thousand square miles; it constitutes an empire in extent and population, which cannot be well governed except by the exercise of the greatest moderation, wisdom and firmness on the part of the Legislature and the Executive.

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[a] Const. 1846, art. 12, § 1.

The magnificent harbor which lies at our very gates invites to the metropolis of the State and of the whole country the trade and commerce of all foreign lands; while the great lakes upon our borders, and the canals and railroads which connect them with the ocean, bear onward to the same metropolis the vast and increasing products of our own western and northwestern States. Hence the unparalleled growth and progress of our great city, which including what may be properly called its suburbs, numbers more than one-third of the population, and pays more than one-half of the taxes of the State. How such a city can be best governed, how the apparently conflicting interests between it and other portions of the State can be justly harmonized, how the differences of sentiment and thought, political and social, between it and other sections can be adjusted, are problems of serious import. These and other grave questions, growing out of conflicting ideas, will continually present themselves. You are to determine what legislation shall be had with reference to our canals and railroads, our moneyed corporations, our schools and colleges, our asylums, prisons and charities, our great debt and heavy taxes, and to our varied population, differing not only in religious faith, but in views of moral and social obligations, customs and duties. The very magnitude of our territory and of the population within its limits admonishes us that upon these and other kindred subjects it is a necessity that we entertain none but broad and comprehensive ideas. Whatever may be our individual opinions to-day, the great majority of thoughtful men will sooner or later be forced to acknowledge that this great metropolitan State cannot be governed upon any merely provincial theories, or by the enforcement of any narrow-minded, sectional or illiberal policy; and that the masses of the people, while they will demand of their representatives economy in administration, perfect preservation of law and order, and certain protection to life and property, will also insist that in everything which relates to social, domestic and religious life and the pursuit of personal welfare and enjoyment, there shall be no undue or unnecessary legislative or official interference. We must so act as to promote contentment, reconciliation and harmony, rather than to encourage dissension, alienation and division.

We must not favor legislation which creates, in the minds of a large number of law-abiding citizens, dissatisfaction with law and law-makers. All enactments should be, as far as possible, general in their application. All legislation should be for the whole people. It should be our aim so to conduct public affairs as to avoid those sectional jealousies from which have sprung suggestions that a division of the State might be desirable. State pride and State interests alike forbid such division. New York stands to-day the Empire State of the Union, and, if governed by wisdom, it has before it a career of ever-increasing greatness and prosperity.

There is no real conflict of interest between city and country. Agriculture and commerce together make our State great and prosperous. The merchant and the agriculturist are mutually dependent upon and interested in each other's welfare.

During the past year the agricultural interests of the State have been greatly favored by Providence. Our fields have yielded large harvests, for which the farmer has found a ready market and abundantly compensating prices. He does not feel at present the full weight of the burdens of taxation, and he rejoices in his prosperity. He knows, however, that these burdens must in the end be borne by country and city alike; that he cannot escape his share of them; and that at some time a season of disappointment and trial will come. He therefore unites in an admonition to all in authority that public resources must be husbanded; that no unjust or unnecessary taxes shall be imposed; and that, while in all public affairs a reasonable liberality is to be encouraged, extravagance and waste will be condemned. A large amount of invested capital has been declared by Congress exempt from the taxation which now oppresses nearly every interest in the country; those who bear no portion of the public burdens will never be active in opposing their increase. Some will be always ready to favor projects involving great outlays of public money in enterprises of real or supposed merit, but the great body of the people will not sanction any expenditures or appropriations, the necessity of which is not clearly apparent.

By the Constitution, the Executive is required " to communicate, by message to the Legislature, at every session, the condition of the State, and to recommend such matters to them as he shall judge expedient.* " I proceed to discharge this duty.

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* Const. 1846, art. 4, § 4.

The following is a condensed statement in relation to the finances and indebtedness of the State.

Receipts and Payments.

General Fund.

Deficiency in the revenue on the 30th of September, 1867, two million eight hundred and sixty thousand five hundred and eighty-six dollars and thirty-eight cents..	$2,860,586.38
Payments of the year, ten million two hundred and eight thousand one hundred and ninety-eight dollars and forty-six cents..	10,208,198.46
	$13,068,784.34
Receipts, ten million one hundred and twelve thousand three hundred and thirty-one dollars and thirty cents.............	10,112,331.30
Deficiency of the revenue on the 30th of September, 1868, two million nine hundred and fifty-six thousand four hundred and fifty-three dollars and fifty-four cents.....	2,956,453.54

There was due at the close of the fiscal year from the city of New York, four million five hundred and thirty thousand and fourteen dollars and seventeen cents ($4,530,014.17), of which four million dollars ($4,000,000) has since been paid; making up the above deficiency and leaving a large surplus.

General and Other Funds.

Receipts of the year on account of all the funds, except the Canal and Free School Fund, sixteen million three thousand one hundred and seventy-eight dollars and fifty-three cents............................	$16,003,178.53

Balance due the treasury on the 30th of September, 1867, three hundred and fifty thousand and nine dollars and fifty-eight cents.	$350,009.58	
Payments of the year, fourteen million nine hundred and four thousand six hundred and forty-seven dollars and fifty-four cents.	14,904,647.54	
		$15,254,657.12

Balance in treasury on the 30th of September, 1868, seven hundred and forty-eight thousand five hundred and twenty-one dollars and forty-one cents.............	$748,521.41

TAXES.

The State tax levied in 1868, was 5¾ mills, for the following purposes: For schools, 1¼ mill; for general purposes, 1¼ mill; for canals, $1\frac{11}{195}$ mill; for Bounty debt, 2⅛ mills, and for the Whitehall and Plattsburgh Railroad, $\frac{1}{13}$ mill — total, ten million two hundred and forty-three thousand three hundred and seventeen dollars and one cent ($10,243,317.01). The State tax levied in 1867, amounted to twelve million six hundred and forty-seven thousand two hundred and eighteen dollars and seventy-one cents ($12,647,218.71).

STATE DEBT.

On the 30th September, 1867, the total funded debt was forty-eight million three hundred and sixty-seven thousand six hundred and eighty-two dollars and twenty-two cents ($48,367,682.22), classified as follows:

General Fund debt, five million six hundred and forty-two thousand six hundred and twenty-two dollars and twenty-two cents.	$5,642,622.22

Contingent, one hundred and thirty thousand dollars	$130,000 00
Canal, fifteen million seven hundred and thirty-three thousand and sixty dollars	15,733,060.00
Bounty, twenty-six million eight hundred and sixty-two thousand dollars	26,862,000.00
	$48,366,682.22

On the 30th September, 1868, the total funded debt was forty-four million nine hundred and sixty-eight thousand seven hundred and eighty-six dollars and forty cents ($44,968,786.40), classified as follows:

General Fund debt, four million seven hundred and seven thousand eight hundred and twenty-six dollars and forty cents	$4,707,826.40
Contingent, sixty-eight thousand dollars	68,000.00
Canal, fourteen million two hundred and forty-nine thousand nine hundred and sixty dollars	14,249,960.00
Bounty, twenty-five million nine hundred and forty-three thousand dollars	25,943,000.00
	$44,968,786.40

The following statement shows the amount of the State debt on the 30th of September, 1868, after deducting the unapplied balances of the Sinking Funds at that date:

	Debt on the 30th September, 1868.	Balances of the Sinking Funds, September 30, 1868.	Balance of debt after applying Sinking Funds.
General Fund	$4,707,826 40	*$153,178 54	$4,554,647 86
Contingent	68,000 00	15,517 82	52,482 18
Canal	14,249,960 00	4,017,232 43	10,232,727 57
Bounty	25,943,000 00	†1,918,408 87	24,024,591 13
Total	$44,968,786 40	$6,104,337 66	$38,864,448 74

* Includes $350,000, due October 1, 1868, and since paid. † Deducting interest accrued to October 1, 1868, payable January 1, 1869.

It appears from this statement that over six millions of dollars ($6,000,000), balances of Sinking Funds, have accumulated, applicable to the redemption of the debt, and that the net amount of the State's indebtedness at the end of the fiscal year was only thirty-eight million eight hundred and sixty-four thousand four hundred and forty-eight dollars and seventy-four cents ($38,864,448.74). The Sinking funds, which there is no reason to suppose will be diminished, will, at their present rate of application, extinguish the whole debt within nine years.

CANALS.

The following statement will show the condition of the Canal Fund for the fiscal year:

CANAL FUND.

Balance in the treasury and invested October 1, 1867, three million eight hundred and forty thousand nine hundred and thirty-five dollars and sixty-six cents.....	$3,840,935.66
Received during the year ending 30th September, 1868, five million six hundred and eighty-one thousand two hundred and twenty-six dollars and eleven cents........	5,681,226.11
	$9,522,161.77
Paid during the year, four million eight hundred and twenty-three thousand two hundred and thirty-nine dollars and thirty-three cents	4,823,239.33
Leaving a balance 30th September, 1868, of four million six hundred and ninety-eight thousand nine hundred and twenty-two dollars and forty-four cents	$4,698,922.44

REVENUES AND EXPENDITURES FOR THE FISCAL YEAR.

Statement of the revenues of the State canals, and the expenses of collection and ordinary repairs during the fiscal year ending 30th September, 1868:

RECEIPTS.

Tolls, four million four hundred and seventeen thousand five hundred and fifty-nine dollars and fifty cents..................	$4,417,559.50
Rent of surplus water, seven hundred and fifty dollars	750.00
Interest on current revenues, thirty-two thousand seven hundred and ninety-one dollars and sixty-nine cents............	32,791.69
Miscellaneous receipts, twenty-six thousand four hundred and forty-four dollars and ninety-eight cents	26,444.98
	$4,477,546.17

PAYMENTS.

To Canal Commissioners for ordinary repairs, two hundred and forty-one thousand six hundred and forty-seven dollars and eighteen cents	$241,647.18	
To contractors, for repairs, seven hundred and seventy-five thousand one hundred and eighteen dollars and seventy-four cents	775,118.74	
To superintendents, for repairs, two hundred and ninety-one dollars and two cents	291.02	

To collectors, for salaries, clerk hire, pay of inspectors and expenses of collectors' offices, seventy-six thousand seven hundred and sixty-one dollars and eleven cents	$76,761.11	
To weighmasters, thirteen thousand three hundred and forty-seven dollars and seventy cents	13,347.70	
For salaries chargeable to annual revenues, refunding tolls, printing and other miscellaneous payments, seventy-seven thousand and seventy-nine dollars and twenty-nine cents	77,079.29	
		$1,184,245.04

"Surplus revenues," three million two hundred and ninety-three thousand three hundred and one dollars and thirteen cents	$3,293,301.13

Amounts Set Apart by Article VII of the Constitution, viz:

To Sinking Fund under section 1, one million seven hundred thousand dollars	$1,700,000.00
To Sinking Fund under section 2, three hundred and fifty thousand dollars	350,000.00
To Sinking Fund under section 3, one million one hundred and sixteen thousand two hundred and forty-two dollars and sixty-six cents	1,116,242.66

For the support of Government under section 3, one hundred and twenty-seven thousand and fifty-eight dollars and forty-seven cents	$127,058.47
	$3,293,301.13

CANAL DEBT PAYING INTEREST 30TH SEPTEMBER, 1868.

	Principal	Annual interest of
Under Article 7, section 1 of the Constitution......	$2,230,700.00	$111,535.00
Under Article 7, section 3 of the Constitution......	10,324,100.00	619,196.00
Under Article 7, section 12 of the Constitution......	1,685,000.00	101,100.00
	$14,239,800.00	$831,831.00

There are also ten thousand one hundred and sixty dollars ($10,160) of Canal debt, which sum is past due and does not now bear interest; this is included in my previous statement of Canal debt.

The aggregate balance of all the Sinking Funds applicable to the Canal debt in the treasury, and temporarily invested on the 30th of September, was four million and seventeen thousand two hundred and thirty-two dollars and forty-three cents ($4,017,232.43). These Sinking Funds are pledged for the payment of the interest and the redemption of the principal of the several debts and loans incurred under sections one, three and twelve, of article seven of the Constitution in the construction and enlargement of the canals. The application of the above balance to the several debts, for the payment of which these funds have been provided and set apart, would reduce the above outstanding indebtedness to the sum of ten million three hundred and seven thousand nine hundred and twenty-one dollars and twenty-four cents ($10,307,921.24) as will more fully appear from the following statement:

	Debt 30th September, 1868.	Balance of Sinking Fund, 30th September, 1868, including temporary investments.	Balance of debt after applying Sinking Funds.
Under art. 7, sec. 1, of the Constitution............	$2,240,860 00	$2,316,053 67	....
Under art. 7, sec. 3, of the Constitution	10,324,100 00	1,122,520 12	$9,201,579 88
Under art. 7, sec. 12, of the Constitution............	1,685,000 00	578,658 64	1,106,341 36
Total...............	$14,249,960 00	$4,017,232 43	$10,307,921 24

It will be seen from the last statement, which is made up by the Canal Department, that the total amount of Canal debt is seventy-five thousand one hundred and ninety-three dollars and sixty-seven cents ($75,193.67) in excess of the amount previously stated by me. The first statement is from the Comptroller's books. The explanation of this discrepancy is as follows:

The Canal debt, under section 1 of article 7 of the Constitution, is two million two hundred and forty thousand eight hundred and sixty dollars..................	$2,240,860.00
The Sinking Fund is two million three hundred and sixteen thousand and fifty-three dollars and sixty-seven cents...........	2,316,053.67
Excess of Sinking Fund over debt, seventy-five thousand one hundred and ninety-three dollars and sixty-seven cents	$75,193.67

which the Comptroller has included in the Sinking Fund applicable to the payment of the residue of the Canal debt, and which the Auditor does not include.

The amount carried to the Sinking Fund under section one, is fully sufficient to pay the balance due on the debt originally incurred for the construction of the canals, and known as the Canal debt of 1846. The extinguishment of this debt makes a further annual appropriation of one million seven hundred thousand dollars ($1,700,000) no longer necessary, and enables the Legislature to apply the surplus revenues to the immediate payment of the General Fund Debt and enlargement loans, in accordance with the provisions of sections two and three, of article seven of the Constitution.

The Auditor of the Canal Department reports that the balance due on the General Fund debt for the payment of which the canal revenues are chargeable, is four million five hundred and fifty-four thousand six hundred and forty-seven dollars and eighty-six cents ($4,554,647.86). The annual appropriation of one million five hundred thousand dollars ($1,500,000) hereafter required by said section two, will be sufficient to pay the principal and accruing interest of this debt in less than four years. The debt contracted by virtue of the provisions of said section three, for the enlargement and completion of the canals, amounting, on the thirtieth of September last, to ten million three hundred and twenty-four thousand one hundred dollars ($10,324,100) matures on an average in less than six years. To supply the Sinking Fund with the means to pay the interest and redeem the principal of this debt as it falls due, will require an annual appropriation of two million three hundred and forty thousand dollars, ($2,340,000). Funds have been provided for the payment of all outstanding claims and liabilities against the State, except such as may have arisen during the last year for awards made by the Canal Appraisers for lands appropriated or occupied for public purposes. The amount of business transacted upon the canals, their general condition, management and supervision, compare favorably with any previous season. Their revenues have been nearly half a million in excess of those of 1867, while their current expenses, for care, superintendence, and ordinary repairs, have been over two hundred thousand dollars less than the annual average for the four preceding years.

It affords me great pleasure to congratulate the Legislature and the people of the State upon the fact that the surplus revenues of the canals for the past fiscal year have been sufficient to pay the balance of the canal debt of 1846, satisfy the other requirements of the Constitution, and contribute over a hundred thousand dollars "to defray the necessary expenses of the government."[b]

The Erie canal, by its geographical position and its physical characteristics, has a special and an important relation to the commerce and business not only of our own State, but of the populous and rapidly growing communities of the great northwest. Connecting the Hudson with the lakes it is an indispensable link in a chain of water communication, which continues to be of great power and value notwithstanding the improvements in the methods of land transportation which are characteristic of our times. This work is a trust for the people of this State, whose enterprise and capital have created it; but it is to be administered in a spirit of liberality toward those great populations whose growth has been fostered by it, and whose welfare it continues to affect. To maintain it in a condition of efficiency, and to improve it in a practical manner, as the necessities of business from time to time demand, is our interest as proprietors, and our policy with reference to the commerce of the State and country. To protect it from embarrassment, arising out of improvident expenditures, ill-considered changes in its structure, or charges upon its revenues, growing out of other undertakings, is an obligation clearly resting upon us. The general plan of its construction and its adaptation to the business for which it was intended, provide a convenient, easy, and an economical means of transportation. The complaints that have arisen, some of which have been made the occasion of demands for fundamental changes in the work, have been provoked mainly by failures in the administration.

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[b] Const. 1846, art. 7 §§ 1, 2, 3, am. 1854.

The most unnecessary, as well as the most mischievous, of these failures has been the allowing of the water-way of the canal to become narrow at the bottom, and shallow, by neglect to remove the gradual accumulations of earth incident to the use of the work and the lapse of time. The consequences have been that the flow of water has been obstructed, its supply lessened, especially on the short levels, the movement of the boats retarded, the time of transits lengthened, and the cost of transportation increased. Frequent complaints, of a serious character, have also arisen from the failure to make provision for prompt repairs, for keeping the locks in efficient working order, and for doubling them when necessary. All persons doing business on the canals will agree that these evils have been much less during the navigation season of 1868 than before. During and for some time prior to the season of 1867, they were so serious as to greatly impair the efficiency of the canals and to create very extensive dissatisfaction among all persons engaged in the business of transportation. I do not propose now to speak at length in regard to the specific improvements to the making of which such surplus revenues as the State may have at its command should be applied. Upon this subject I respectfully refer you to the able report of the State Engineer, of which I ask your careful consideration. Besides such general improvements as experience suggests and the demands of commerce require, it is a constant duty, as well as the best economy, to keep the canals at all times in thorough repair, and in the best and most efficient working condition. It is especially important, that the water-way be restored to its full dimensions, and even be incidentally and progressively enlarged. The considerations which I have submitted are applicable to all the canals in proportion to the extent of their business.

With regard to the present contract system for repairs to the canals, I beg leave to call your attention specially to the following extract from the report of the State Engineer: "The present system of repairs has proved a great disappointment to its early advocates, and as an experiment, has wholly failed in protecting the interests of the State and in preserving and maintaining our public works. It has proved to be anything but economical to the State, or beneficial to navigation, and its repeal is earnestly desired by all directly interested in the navigation of the canals, and strongly recommended by all the present and retiring canal officials." These views of the State Engineer meet with my full approval, and I unite in his recommendation. In concluding these remarks, I desire to enter my earnest protest against the proposition, which in some quarters has met with favor, that it is the duty of the general government to interest itself in our canals, and ultimately to acquire control of them. Our State has a just pride in its public works, and is quite competent to take care of them. To foster and protect them, to adapt them fully to the public necessities, and to the growing demands of the internal commerce of the country, should be the duty of the Legislative and Executive departments.

SALT SPRINGS.

The Superintendent of the Onondaga Salt Springs reports the quantity of salt inspected during the last fiscal year at eight million seven hundred and ninety-three thousand five hundred and fourteen bushels (8,793,514) being an increase of production over that of the previous fiscal year of two million sixteen thousand four hundred and fifty-four bushels (2,016,454). The amount of revenue received from all sources was eighty-eight thousand and forty-nine dollars and forty-seven cents ($88,049.47); total expenditures connected with the superintendency of the springs was forty-nine thousand two hundred and thirty-eight dollars ($49,238); the amount of net revenue received by the State being thirty-eight thousand eight hundred and eleven dollars and forty-seven cents ($38,811.47).

STATE PRISONS.

The following facts in regard to the receipts and expenditures of the State prisons are furnished me by the Comptroller:

Earnings.

Sing Sing	$135,363.78
Auburn	125,334.89
Clinton	238,428.55
	$499,127.22

Payments.

Sing Sing	$303,364.36
Auburn	208,839.53
Clinton	420,008.31
	$932,212.20

For the number of inmates of the several prisons, and other details, I respectfully refer you to the reports of the Inspectors, which will be duly presented.

Our prisons have not been for many years self-supporting institutions. I am satisfied they can be better managed, as well in respect to finances as discipline. The prison system of this State abounds in evils and errors. Many of these are, doubtless, due to the fact that the persons appointed to discharge the duties of agents, wardens and keepers, are too often selected from political considerations only, without reference to their capacity and qualifications. The present contract system for the employment of the labor of the prisoners is an unwise one. It affects very unfavorably the discipline of the institutions, and does not produce satisfactory pecuniary results. The labor of the convicts should be directed and employed entirely by the Prison Superintendents, and the products of such labor should be sold by them for the benefit of the State. This system would remove many existing causes of complaint in regard to convict labor, and result in material advantage to the public.

The law passed some years ago, allowing to convicts, for good behavior, a certain number of days' deduction from their terms of imprisonment, by way of commutation of sentence, has been beneficial in its operation; and if, under a system by which the Superintendent should directly employ the labor of the prisoners, provision should be made that a small portion of their earnings be laid aside for their benefit, to be paid to them on the expiration of their sentence, the effect upon their present conduct and future lives would, I think, be useful alike to them and to society. I cannot in this message enter into detailed statements and suggestions of all that is necessary for prison reform. I commend to your consideration the report of the Prison Association, which, under a resolution of the last Legislature, was directed to investigate the financial administration of the State Prisons and the reformatory agencies employed in them.

It is time that the great State of New York, throughout which extends such a grand and liberal system of education and charity, should give to this subject of prison management and reform the attention which its importance demands, and which, hitherto, it has failed to receive.

I commend to your favorable consideration the various houses of refuge and other institutions for the reformation of juvenile delinquents. It is wise economy to aid them, and to provide for their increase and extension.

I respectfully call your attention to the present practice of detaining witnesses in criminal cases, when unable to give security for their appearance at the trial of the accused. They are generally poor, sometimes strangers temporarily visiting the State and made the victims of crime, often have families dependent upon them, and are kept in prison upon the claim that public necessity requires their actual presence at the trial. It frequently happens that while the unfortunate witness is in prison, the alleged criminal is at large, on bail. The unnecessary detention of the innocent to convict the guilty is a cruel wrong. I submit whether it cannot be remedied by proper legislation.

INSURANCE.

Inasmuch as the report of the Insurance Department is not due until after the assembling of the Legislature, I am unable to communicate any information in regard to its workings during the past year. I refer you to the report when presented.

BANKS.

The number of financial institutions having relations, more or less intimate, with the Banking Department, on September 30, 1868, was four hundred and eighty-eight (488).

Of these, two hundred and forty-eight (248) were banks that had voluntarily taken the final steps to close their banking business under the laws of this State, by providing for the redemption of their circulation within six (6) years.

Three (3) others are insolvent, but their circulating notes are amply secured. Forty-eight (48) banking institutions, not above enumerated, have been converted into national banks or are otherwise changing their condition, but have not availed themselves of the provisions of the law for finally closing their circulation account.

One (1) trust company and one (1) savings bank are voluntarily winding up their affairs, and one (1) savings bank, the Niagara County, is closing its business in consequence of insolvency, with liabilities, however, supposed to be less than four thousand dollars ($4,000).

Forty-seven (47) incorporated banks, whose charters have expired, still have notes outstanding, for the redemption of which they have not made any final deposit.

One hundred and one (101) savings banks, with an aggregate of deposits exceeding one hundred and fifty millions of dollars ($150,000,000); forty-five (45) banks of discount and deposit, including some of the oldest and most substantial and popular institutions in our State; and four (4) trust companies, with large capital and extensive business, still retain relations with this Department, unaffected by the financial changes of the last few years. One of these, The Mechanics' and Farmers' Bank of Albany, has evinced its confidence in the freebanking system of the State of New York by returning to it from the national system under the provisions of the enabling act of 1867.

One (1) banking association, one (1) trust company, and two (2) or more savings banks, have been organized during the year, and other banking associations have filed certificates, but have not taken the final steps to organization precedent to the transaction of business.

The whole amount of circulating notes of all banks in this State, outstanding and charged to their accounts, on the 1st day of October last, was two million nine hundred and fifty-four thousand three hundred and ninety-one dollars ($2,954,391); of this one million six hundred and sixty-five thousand eight hundred and fifty-five dollars ($1,665,855) were issues of free banks, one million two hundred and eighty-eight thousand five hundred and thirty-six dollars ($1,288,536) were issues of Safety Fund and Incorporated Banks. The amount for which securities were held by the Superintendent of the Banking Department was two million and twelve thousand seven hundred and sixty-eight dollars ($2,012,768) leaving unsecured nine hundred and forty-one thousand six hundred and twenty-three dollars ($941,623). But this consists, for the most part, of notes of very old banks, and is represented by their account of supposed lost circulation, or of banks that through some form of organization still redeem their notes dollar for dollar, and, in some instances, in gold.

The amount of circulating notes returned to the Bank Department and destroyed during the last fiscal year, was nine hundred and ninety-one thousand two hundred and seventy-three dollars ($991,273).

MILITIA.

The Adjutant General reports that the National Guard of the State is, in its organization and discipline, in a sound and prosperous condition; that it numbers between twenty-five thousand (25,000) and thirty thousand (30,000) men and consists of—

Fifty regiments of infantry.
Three battalions of infantry.
One regiment of artillery.
Three battalions of artillery.
Three batteries of artillery.
Three regiments of cavalry.
Two battalions of cavalry.
One squadron of cavalry.

The Legislature of 1868 authorized a reduction of the maximum force from fifty thousand (50,000) to thirty thousand (30,000), and during the year forty-nine (49) regiments of infantry and two (2) battalions of artillery have been disbanded.

It will be my aim to reduce, as far as possible, the military expenses of the State, without impairing the efficiency of the State National Guard.[1]

EDUCATION.

The condition of the colleges and academies of the State will appear from the annual report of the Board of Regents of the University. The opening of the Cornell University, at Ithaca, in October last, was an event of marked interest. The widely extended influence of the academies in the State entitle them to liberal consideration. A suggestion has been made that the annuity given, more than thirty years ago, from the United States Deposit Fund, might now, with propriety, be increased. The State Library and the State Cabinet of Natural History, both under the control of the Regents of the University, are in a satisfactory condition. The additions to the library, during the past year, have been larger than usual. The collections of the State Cabinet have been greatly increased.[2] I recommend the usual appropriations for both.

I submit the following statement in relation to the common schools, for the year ending September 30, 1868:

FINANCIAL.

Receipts.

Amount reported on hand, Oct. 1, 1867....	$1,197,924.70
Apportioned to districts....................	2,315,166.80
Proceeds of Gospel and School lands......	22,843.46

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[1] Chapter 778, passed May 8, amending previous militia acts, provided for making an enrollment of persons subject to military duty once in five years, beginning in 1871. The same act reduced the maximum force of the national guard from 30,000 to 20,000.

[2] Chapter 774, passed May 8, directed the donation of certain duplicate specimens of natural history belonging to the State to the American Museum of Natural History in the city of New York.

Raised by local taxation	$6,311,186.12
From all other sources	633,346.58
	$10,480,467.66

Expenditures.

For teachers' wages	$5,586,546.42	
For libraries	26,926.48	
For apparatus	234,382.34	
For colored schools	64,765.58	
For school houses, sites, repairs, furniture, etc.	2,166,566.22	
For all other incidental expenses	930,640.61	
Amount reported on hand Oct. 1, 1868	1,470,640.01	
		$10,480,467.66

STATISTICAL.

Number of children of school age	1,464,424
Number of children attending school some portion of the year	971,512
Number of teachers employed in common schools for 28 weeks or more	16,580
Number of male teachers	5,883
Number of female teachers	21,870
Number of school districts	11,731
Number of school houses	11,673
Number of volumes in district libraries	1,064,229
Amount of public money to be apportioned during current fiscal year	$2,520,000

Since the school tax was increased from ¾ of a mill to 1¼ mills, and the schools opened to all of proper age without charge, the number of children attending has greatly increased. Four Normal Schools for the training of teachers are in full operation. Two others will be opened early in the present year, and two more early in the year 1870.

It is not necessary for me to urge upon you the importance of doing whatever may be necessary to foster the educational interests of the State.

CHARITIES AND ASYLUMS.

In relation to the operation of the several public charities and asylums in the State, I respectfully refer you to the official report, which will be transmitted.

The commission of Public Charities was organized under an act of the Legislature of 1867. During the past year nearly all the charitable institutions of the State, both public and private, and also the poor houses have been visited under the authority of the Board. Until the creation of this commission, notwithstanding the large annual contributions of the State to charitable institutions, no provision existed for any systematic supervision or examination of them. The report which will soon be submitted, will, I doubt not, present many interesting facts, and valuable suggestions. I commend all the great charities of the State to the favorable consideration of the Legislature, and recommend such additional legislation as may be necessary to increase the efficiency of the commission.

The title to the Inebriate Asylum at Binghamton, is, under the operation of the law passed in 1867, vested in the State. No provision was made by that law for the government of the institution, and its management is still in the hands of the trustees under the charter. I submit to the Legislature whether any changes should be made in its administration.

THE NEW CAPITOL.

The Commissioners of the New Capitol, in pursuance of an act of the Legislature, have caused the additional land, deemed requisite for the building, to be taken by appraisement. The jury of appraisal selected under the proceedings in the Supreme Court, was composed of citizens of the highest respectability, and their awards are unquestioned. Plans for the building have been adopted, and contracts for part of the material for its foundation have been authorized. The site of the building has been fixed upon. I trust there will be no delay in the progress of this work, and recommend such legislation, with reference to it, as may be necessary.[3]

QUARANTINE AND PUBLIC HEALTH.

The past year has been one of more than ordinary exemption from imported disease. This has arisen rather from natural causes than from any increase of our facilities for warding off its approach. The State has long rested under the charge of having enacted stringent laws for the protection of her citizens from the introduction of pestilence through her chief commercial port, without having provided proper means for their execution. With a commerce which extends to almost every clime, and with a tide of immigration which yearly adds hundreds of thousands to our population, we are constantly exposed to the introduction of infectious diseases. The Legislature early appreciated the necessity of guarding against this danger, but the mode by which it could be accomplished was surrounded with difficulties which checked, and for a while defeated, appropriate legislation. It is believed, however, that when the measures authorized by existing laws shall have been perfected, the State will no longer rest under the reproach of imposing duties upon its officers which it has left them, in a measure, powerless to execute.

At the session of 1866 an act was passed constituting the Commissioners of Quarantine and the Mayors of the cities of New York and Brooklyn a Board of Commissioners to perform certain duties, among which was the erection of a structure on West Bank, in the lower bay of New York, to be used for a quarantine hospital. Pursuant thereto, the Board, in the month of August of that year, awarded the contract for the erection of the structure; but they were delayed by an injunction from executing the contract until the 11th of September following. Owing to this delay, it was not until the 14th of January, 1867, that the first cribwork, which was to constitute the foundation of the structure, was sunk in its proper position. The inclemency of the weather soon after compelled the temporary suspension of the work, but it was resumed, and from time to time prosecuted as the elements permitted, until the foundation was completed. It is now considered to be in proper condition for the erection of the buildings thereon, and it is probable that these will be finished during the present season.

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[3] Appropriations for the new capitol were made by the general appropriation act, chapter 645, passed May 6.

The erection of this structure was regarded as a very doubtful experiment by many who believe that the first attempt would demonstrate its impracticability at so exposed a point in the waters of the bay. But I am advised by competent judges that its success can no longer be considered problematical.

In performing the duties enjoined upon them, the Board found themselves embarrassed by the restrictions of the act by which they were created. It authorized them to enter into a contract for the erection of the structure, but, in terms, gave them no power to modify it or to guard against emergencies or to make alterations which might prove to be necessary in the progress of the work. A recent and severe storm has tested the strength of the structure more thoroughly than it had before been tried. It stood the test — nevertheless, I would suggest that an addition to the rip-rap should be made for still further security.

In view of doubts existing as to the powers of the Board, I recommend such legislation as may be necessary to enable them to accomplish their work.

By an act passed at the session of 1868, the same Board was authorized to erect another structure on West Bank, to be used for a boarding station for quarantine purposes. Pursuant to that act they have entered into a contract and I am advised that the work is now in successful progress. Only fifty thousand dollars ($50,000) was appropriated by the act, but it was generally supposed that a sum of fifty thousand dollars ($50,000) which had been appropriated in the Supply Bill of 1867, for the erection of a place for the temporary detention of passengers under quarantine, could be applied to this purpose. A doubt, however, has been suggested, whether the act of 1867 is not, in this respect, wholly superseded by a subsequent enactment. I respectfully recommend whatever legislation may be necessary to complete this work, so essential to the due administration of our quarantine system.[4]

The report of the Commissioners, which will be laid before you, will contain the statistics in reference to diseases treated under quarantine during the past year.

CATTLE DISEASE.

During the past summer a contagious disease, known as the Texas cattle disease, made its appearance in the Western States, and measures were immediately adopted by the Commissioners appointed for the purpose to prevent its introduction into our State. These measures, I am happy to say, proved so successful that but few animals died of the disease, and in every instance it was confined to the farms on which it originally appeared. A full report will be presented to the Legislature at an early day. It is estimated that within this State there are twelve hundred thousand (1,200,000) cattle, the annual value of their products being upward of twenty-four millions of dollars ($24,000,000). The protection of this source of wealth is a matter of so much importance to our agricultural population, as to merit the continued attention of the Legislature. I am informed that the act for the prevention of infectious diseases among cattle, passed April 20, 1866, needs amendment in order to enable the Commissioners to act with the efficiency necessary to secure the objects of the law. I recommend the subject to the careful consideration of the Legislature.[5]

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[4] The supply bill, chapter 822, passed May 10, appropriated $132,491 for work on the west bank quarantine establishment.

IMMIGRATION.

During the past year the number of alien immigrants landed at the port of New York, was 213,708, showing a decrease from 1867, of 29,023. This decrease may be attributed to the still unsettled condition of political affairs, and the competition of other States, which, in order to attract immigration to themselves, have established direct steam communication with European countries. The Commissioners of Emigration during the past year have improved the lands and buildings and the facilities for caring for the sick and destitute on Ward's Island. They have also established a labor exchange in connection with the landing depots at Castle Garden, by means of which they have been enabled to supply the demand for labor from various parts of the country, and to secure immediate employment for many immigrants. Over thirty thousand orders for male and female immigrant labor have been filled from this bureau of the department. For more detailed accounts of the workings of the Emigrant Commission, you are respectfully referred to their annual report, which will shortly be communicated to you.

For information in regard to the various other commissions in the Metropolitan district, and other district commissions and boards in the State, I respectfully refer you to the several reports, which will be duly transmitted.

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[5] Chapter 271, passed April 21, contained provisions intended to prevent the introduction and spread of infectious diseases among cattle, sheep and swine.

CIVIL AND CRIMINAL CODES, &c.

The codes prepared by the two commissions organized under the Constitution have heretofore been presented to the Legislature. The Practice Commission, created pursuant to the twenty-fourth section of the sixth article, has reported codes of civil and criminal procedure; and the Code Commission, created pursuant to the seventeenth section of the first article, has reported civil, penal and political codes. A book of forms has also been prepared, adapted to the code of civil procedure. These volumes were designed to lay before the people, in a concise and systematic form, the whole body of the law, common and statutory, with formulas for general use. Much labor has been expended by the Commissioners upon their work, which has commanded considerable public attention. The code of civil procedure has been, to a great extent, adopted by sixteen states and territories; the code of criminal procedure by ten of them, and the civil and penal code, the last reported, has been adopted by two of the territories. In view of the great importance attached to the subjects embraced in these various reports, I commend them to your early consideration.

If they do not command the approval of the Legislature, I respectfully suggest the propriety of prompt action to secure a new revision of the statutes of the State, as well as an immediate reform in our criminal laws.

I particularly recommend that provision be made by statute that in all cases of murder, where the degree of premeditation or the circumstances attending the homicide do not, in the opinion of the jury, justify punishment by death, they may render a verdict of murder of a less degree, to be punished by imprisonment for a term of years, the maximum of which shall be fixed by law.

METROPOLITAN DISTRICTS AND COMMISSIONS.

The Constitution of the State, in terms, recognizes for the purposes of local government, counties, cities, towns and villages, and no other territorial divisions. It directs that all officers, whose appointment is not provided for by it, shall be elected by the electors or appointed by the authorities of the locality within which their powers are to be exercised, distinctly recognizing the right of electors in local communities to choose their own officers, and, as they bear their own burdens, to administer their own affairs.[c] The plain spirit of the Constitution has been clearly violated in the creation by the Legislature of other geographical divisions than those fixed and established by the organic law. It is true the highest court of the State, by a bare majority vote, held this legislation valid;[d] but it has, nevertheless, been very generally admitted to have been a partisan contrivance for power, and if not an open violation, at least an evasion of the Constitution. One of these districts, called the Metropolitan District, embraces the counties of New York, Kings, Westchester and Richmond. The people of these counties and of the cities of New York and Brooklyn, have thus been deprived of the right of managing their own local affairs in many important particulars, especially with reference to matters of health, police, and excise; and these interests have been committed to officers appointed by State authority, who do not represent the majority of the inhabitants of the respective counties.

The effect has been, virtually, to give to the political minority in these districts the power of governing the majority. This never was contemplated by the framers of the Constitution, whose manifest intention was that power and responsibility should go together. I unhesitatingly recommend the repeal of all laws creating these district commissions, and the restoration to the people of every county and city in the State of the constitutional power to regulate and manage their own local affairs. Whatever theory may have been advanced originally in regard to the necessity of these commissions, the fact is indisputable that they have been established only over localities and communities which were not in political sympathy with the dominant party in the Legislature. I recommend the repeal, not only because the legislation to which I object is a usurpation of power and an evasion of the Constitution, but also because the commissions themselves have been to a great extent partisan in their character and conduct, and because the majority of the people in the respective districts have had no effective representation in them; and these commissions being controlled by authority foreign to the communities in which they exist, and owing no responsibility to the people governed, have been administered without regard to popular rights.

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[c] Const. 1846, art. 10, § 2.

[d] See People ex rel. Wood v. Draper (1857), 15 N. Y. 532.

MUNICIPAL GOVERNMENT.

Questions relating to municipal government in our great cities have immediate connection with the subject to which I have just referred. It is a favorite theory with some that the people of such cities cannot safely be intrusted with the management of their own affairs, and that the State at large is so directly interested in their good government that it should assume entire control over them. No man can assent to this without admitting that our republican form of government is a failure. About one-half of the population of the State reside within the limits of cities; and this theory, if true, would necessarily lead to the conclusion that one-half of our people are unfit to exercise the duties and enjoy the privileges which pertain to the citizens of a free government.

In the city of New York, which may properly be selected as an illustration of my views, the advocates of this false doctrine have, for many years, had an opportunity to try their experiment. They are themselves to-day forced to admit that it has resulted in a failure. The Mayor of the city, its chief magistrate, to whom the people naturally look for a redress of grievances, is deprived of nearly all the powers which properly belong to the executive. There is no department in the city government which is not independent of him and which does not dispense more patronage and exercise more power than he. The Departments of Police, Health, Excise, Public Charities, and Fire, are controlled and directed by separate and distinct commissions, acting independently of each other and of the Mayor. He has no voice in any of these. He can issue no order to any of them. He can call none of them to account. There is no connection between them and the common council of the city, nor between them and the departments proper of the municipal government, although the local authorities are compelled to raise money for their support and maintenance. The result is, as must always be expected in any government so made up and to which there is practically no executive head, confusion, clashing interests, want of harmony, absence of responsibility, extravagance, waste, and general inefficiency. I do not intend to be understood as saying that there are not many things well done; but I affirm that this system, or rather want of system, and this conflict of authority and responsibility, have failed to produce good local government. Among the various commissions the one which has, perhaps, accomplished the most satisfactory results, is the Commission of Public Charities and Corrections, the members of which are appointed by local authority. It has always remained since its creation entirely non-partisan. Its administration has commanded general approval. These facts of themselves afford abundant proof that there is not now, and never was, any necessity or justification for the interference by the Legislature with the plain constitutional right of the people of the city to regulate and manage their own local affairs.

About one-half the amount raised by tax within the city is disbursed by the independent commissions referred to, whose expenditures are subject to no adequate supervision, and who have practically no responsibility. One of the most certain means of connecting misgovernment is direct responsibility to the people, who, through the ballot-box, have summary power of redress. It is the right of the people of that city, as it is the right of the people of all other parts of the State, that they should not be taxed without representation, as well as that the officials placed over them should recognize their direct accountability to the popular judgment. When officers placed over the people by legislative action, expend money or incur responsibility, they do not consider the constituency who pay the bills. They regard themselves as invested with authority by partisan influences from other parts of the State, to secure political ends, and, whether they are faithful or inefficient, prudent or reckless and corrupt in expenditures, just or arbitrary and oppressive, they are apt to believe their party will sustain them as a matter of party necessity.

Experience proves that such officials, imposed, for partisan objects, to usurp power for the minority, consider that a harsh and imperious disregard of the rights of the majority is likely to commend them to those in other parts of the State to whom alone they owe allegiance. This feeling on the part of the superior officers soon infuses itself among the subordinates. The result is that the government becomes an inconsiderate tyranny rather than a temperate and responsible exercise of authority. If this were otherwise, and the people were not taxed and governed without any right of redress, every dollar paid for taxation would draw with it direct responsibility, and every officer would feel himself at all times on trial for his public acts. No party could long maintain local ascendency which did not nominate the best men for office; and did not, by economy and good government, make their control of affairs consistent with the interests of the people.

These considerations are applicable, not alone to the cities of New York and Brooklyn, but to all other cities in the State, which have been brought under the operation of laws establishing district commissions.

I deem it my duty in this, my first annual message, to give decided expression to my opinion that no good government can be secured to any great city unless it shall have one responsible head, in whom shall be vested all executive power, and to whom, as the elected representative of the people, all departments, charged with executive duties, shall be directly and summarily responsible and accountable.

If, with this as the fundamental idea, a plan shall be devised which will give to the political minority within a city a just representation in its councils, we shall, doubtless, secure better results in municipal government than have ever before been attained.

I respectfully call the attention of the Legislature to another subject in which the people of the city of New York have and feel a deep interest. The commercial needs of the metropolis demand that there should be some speedy and wise legislation with reference to its wharves and piers. They should be constructed after the very best plan for making them convenient, adequate and enduring. The work should be commenced as soon as possible.

The question of probable cost is of but little importance. The city can well afford to pay whatever may be necessary to complete the work; when completed it would, by the aid of proper legislation in relation to wharfage, yield a revenue sufficient to pay the interest on the expenditure, and to create a sinking fund for the speedy extinguishment of the debt incurred in the construction. It is not necessary that I should commit myself to any particular form of legislation for the accomplishment of this result, but I would respectfully recommend, by way of suggestion, that if it should be deemed impossible to mature a plan during the present session, the Mayor of the city of New York be authorized to appoint a board, with authority to examine the whole subject, and to report to the next Legislature, for its consideration, a plan of the proposed work, with an estimate of its probable cost, and such suggestions, with reference thereto, as they may deem proper.

THE EXCISE LAW IN THE METROPOLITAN DISTRICT.

The excise law which is in force throughout the Metropolitan district, excepting only in the county of Westchester (which was, for some reason, exempted by the Legislature from its operation) violates principles involving rights of individuals and communities. It confers upon the Excise Board created by the Legislature, and deriving none of its authority from the people in the district, extraordinary and arbitrary powers; and contains, in my judgment, many harsh and unwise provisions. If the objects of its enactment were to diminish the amount of intemperance, and to lessen the consumption of intoxicating liquors, these objects have not been attained. At the same time, this law has been executed and enforced in an arbitrary, despotic and intemperate manner, and in a spirit which has created great dissatisfaction even among many who were its original supporters; while large numbers of sober, temperate, industrious and law abiding citizens feel that they are oppressed by its onerous exactions and requirements. No one deplores more than I do the evils of intemperance; but they are not local, are not confined to any section or district, and if they can be checked or modified by legislation, the remedy can only be secured by the operation of general laws. There is no reason, in my judgment, why the whole, or any portion of the Metropolitan district, should be subjected to an excise law different from that applied to other parts of the State. All such laws should be universal in application, and should have for their object, not the enforcement of extreme and arbitrary views, but the encouragement of good habits and the preservation of public order. The present law needlessly violates private rights. It provokes hostility because it does so, and because it is administered harshly by partisan officers. I therefore recommend its repeal, so that we may have but one law for the whole State, to be administered, whether in counties or in cities, by the legally constituted local authorities thereof, or by officers to be appointed by them. Such a law would command universal respect and general obedience.

PURITY OF ELECTIONS.

Every means should be adopted by which the electors may have secured to them freedom from intimidation or corrupt influences in the exercise of the elective franchise — the highest privilege of a citizen. It cannot be denied that wealth, by its lavish expenditure to control elections, is fast becoming more influential than abilities and public service, to obtain political power and official station. It is not unusual to hear the claims of public men asserted in proportion to the pecuniary contributions which they make to party funds in amounts which obviously cannot be required or used for the legitimate purposes of an election. It is one of the startling evils of the times, that nominations to important offices are sought by and given to men of vast wealth, not because of their capacity and qualifications, but in order that their money may be used to accomplish success. The dangers arising and to be apprehended from this condition of things are manifold. Officials are taught that money, however acquired, is the passport to office and authority; electors are corrupted, and a power is built up, founded on the possession of riches and their corrupt use, tending to the subversion of the rights and liberties of the people, and the destruction of the principles of our government. As one result of this growing tendency of moneyed influences to assert an exclusiveness of class, and a superior domination, sectional and class legislation has been adopted of late years to control, even in regard to suffrage, large communities by special laws not applicable to other parts of the State. Before the law all men are equal, and never more so than when in the performance of their right and duty of voting to sustain principles, and to elect their representatives. Laws to provide regulations and restrictions in regard to elections should apply to all citizens and to all sections alike. The laws are to preserve the purity of the ballot-box and to prevent the corrupt use of money in elections should be general, stringent and rigorously enforced. In my judgment there should be one registry law for the whole State, imposing equal conditions and restrictions everywhere, and it should be the aim thereof to secure to every citizen his right of suffrage, free from intimidation, corruption, or onerous exactions; while the corrupt use of money in elections should be severely punished, and every guaranty established by which illegal voting may be prevented.[6]

FEDERAL CENTRALIZATION.

In this connection it may not be improper to allude to the fact that there is a manifest disposition in some quarters to encourage a movement to vest in Congress the control and regulation of suffrage in all the States. This is another step in the direction of centralized power in the General Government — a power to control elections —

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[6] Chapter 742, passed May 8, "for the more effectual suppression and punishment of bribery," contained provisions relative to the receipt by public officers of rewards for official service, exempting the giver of a bribe from criminal liability therefor, prescribing the penalty for attempting to bribe a public officer, permitting the accused to testify in his own behalf, making the expense of prosecution a state charge, declaring the liability of officers of a corporation for the improper use of its funds, compelling a person to testify notwithstanding the claim that his evidence might tend to disgrace him or subject him to a criminal charge, and prohibiting convictions on testimony of the other party not corroborated in its material parts by other evidence.

which would enable dangerous and unscrupulous men, who might obtain possession of the National administration, to hold it indefinitely, even against the real will of the people. It is very certain that purity of elections in States cannot be secured by transferring the direction or control of them to the authorities at Washington. There can be no purity in the General Government unless it exists first in the States and in the people. The founders of our Government never contemplated the interference of Congress in this matter. They expressly guarded against it.

By the Federal Constitution "the times, places and manner" of holding elections for Senators and Representatives are required to be prescribed in each State by the Legislature thereof; but it is provided that Congress may at any time make or alter such regulations except as to the places of choosing Senators.[e] This authority to prescribe regulations as to "the times, places and manner" of holding elections, was contested at the adoption of the Constitution as vesting in Congress too great a power, which might be exercised so as to defeat the just rights of the States to representation — but it was argued that it was a power which never was intended to be, and probably never would be employed, except when the States might attempt to break up the government by not sending representatives, and then only for national self-preservation. But the question of suffrage was wisely put beyond the control of Congress, and it was provided that "the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature."[f] This settlement of the right of suffrage was regarded "as a fundamental article of republican government." The question of suffrage is thus withdrawn from the capricious or more dangerous interference of Congress. It is not left to

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[e] U. S. Const. art. 1, § 4, clause 1.

[f] U. S. Const. art. 1, § 2, clause 1.

Legislative discretion in the States, but is fixed by the State Constitutions, and here, I think, every reflecting mind will conclude that it may be wisely and safely left.

NATURALIZATION AND CITIZENSHIP.

There is also a disposition manifested to place obstacles in the way of the naturalization of citizens. While in the southern States the right of free and unrestricted suffrage has been suddenly conferred upon the large masses of men, who have never before exercised it, or discharged any other of the duties of citizens, it is now suggested that new restrictions be imposed upon the enjoyment of this high privilege by immigrants who seek to be clothed with the rights of American citizenship. Movements have been already made for depriving the State courts of the power of naturalization, and to confer this power exclusively upon the courts of the United States, and upon commissioners to be appointed by Congress.* It would be impossible for the judges of the United States courts, by reason of the pressure of their judicial duties, and the few places in the country at which the sessions of their courts are held, to extend the necessary facilities to those entitled to become citizens. The whole business would necessarily devolve upon the partisan commissioners created by Congress, holding no responsible official relation to the judiciary of the country or of the States. Thus naturalization would become more a matter of favor than of right. The power is now exercised by judges in the different States representing all shades of political faith, and if there be any abuses now they can be remedied under the existing jurisdiction, and they are far less than those which would result from the transfer of this power to any body of officials not chosen for their judicial qualifications, not exercising judicial functions in other matters, and created by one central authority representing necessarily a political party. These movements indicate a tendency on the part of their supporters to obstruct and hinder naturalization, and thus to discourage the renunciation, by men from other countries, of their allegiance to foreign governments in order to become faithful citizens of our own. Can this policy be a wise one? All good citizens will certainly favor such legislation as may be necessary to check or to punish frauds in naturalization. But the interests of our State and country, peopled from their origin by and owing so much of their greatness to men of foreign birth, and to which the tide of immigration so incessantly and rapidly flows, demand that additional rather than diminished facilities should be extended to all those of good moral character and of undoubted devotion to our institutions, who, having chosen their homes among us, desire to assume the duties and responsibilities of citizens.

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* See the revised naturalization law of June 20, 1906, limiting the power of naturalization to specified United States courts and to State and territorial courts possessing general jurisdiction.

We must not forget that during the late war, when our country needed them to fight the battles of the Union, we extended to them the privileges of citizenship after one year's residence and an honorable discharge, as one of the rewards for their fidelity to the government. Now, in the time of peace, their services are quite as valuable in developing the resources of our new territories, and of the Southern States, and in assisting, by their industry and toil, to work out a practical solution of the great problem of reconstruction; and every inducement should be extended to them.[7]

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[7] Chapter 802, passed May 10, imposed punishments for issuing, procuring or using fraudulent certificates of naturalization.

CONCLUSION.

Few questions of principle or policy will be presented for your consideration, towards the decision of which precedent or experience will not furnish you an accurate guide, or at least effective aid. We need only, to the discharge of our trusts in our respective departments, grave, responsible and numerous as they are, an earnest spirit, a constant and vigilant regard for the public interests, and an unceasing watchfulness in maintaining the integrity, honor and dignity of the State. With these we cannot fail to meet the just expectations of the people.

But beyond the limits of our jurisdiction, there are questions and principles of far wider significance than those which engage our official consideration; which appeal to us as citizens of a common country; which press upon the people in the form of unequal responsibilities; and in which we all have a deep and abiding interest. I allude to the national issues which await solution. I do not intend to refer to them in a partisan spirit, or to discuss them at length. These issues have presented new and difficult questions of government, of finance and taxation, resulting from the rebellion, and we are without guides in previous history, to lead us to their determination. Nearly four years have elapsed since the close of the rebellion, and the Federal authorities have had unrestricted power to reestablish civil government in the States rescued from sedition, and restore to their people peace and the motives to industry; and yet how little has been done towards these ends!

Had they been attained, the South would now be enabled to bear its share of the taxation entailed by the war, and the North relieved of its unequal responsibility, while the whole country, resuming its former commercial relations, would be so far advanced in prosperity and power that in a few years our financial troubles would cease to be the subject of anxiety. Instead of securing these results, Congress has directed its efforts to the suppression of representation, and the subversion of republican government in States, prolonging the subserviency of the civil to the military power, and postponing the return of peace. The people, at the late election, have chosen by their suffrage the Chief Magistrate, to whose guidance they are willing to commit the destinies of the country, and the settlement of the issues which disturb it. These questions do not belong to party, but to the whole country; and it should be our earnest prayer that he who has been thus chosen shall prove equal to the great trust with which he is charged.

Party organizations must be kept up as the means of preserving great principles and maintaining the integrity of the government and the liberties of the people. The majority of the citizens of this State who opposed the policy of the present dominant party in the country and the election of its candidate for the presidency, adhere firmly to their views of public policy, the adoption of which they believe will afford the earliest and best settlement of the great questions which now distract us. They will, however, lay aside all merely partisan considerations, and join in a common spirit of magnanimity and patriotism in sustaining any administration of the Federal government in every earnest effort which it shall make to restore its credit, to maintain the public faith, to re-establish the authority of the Constitution, to unite all our people in amity and concord, to give peace and prosperity to all sections of the Union, and to assert, among nations, the honor of our flag and the rights of those who claim its protection.

There is a spirit of party intolerance growing up which not only arrays men in bitter political hostility, but which creates personal hatred through mere differences of opinion. It follows the elected representatives of the people with detraction and misrepresentation, and impairs their usefulness in the discharge of important trusts involving the public welfare. I consider this a dangerous evil. Public officers, both Federal and State, should be judged by and held responsible for their acts, and not prejudged by clamor and party intolerance; nor should they be intimidated by either. My duty is defined by the oath I have taken to execute the laws of this State and to support its Constitution and the Constitution of the United States. I shall endeavor to do it faithfully; and while I shall uphold and maintain the political doctrines and principles to which I am devoted, and assert and defend the rights of the State and of the people whose representative I am, I will, as the Executive of this State, support the Executive of the United States in every exercise of rightful authority, and in every patriotic effort for the welfare of our common country. The people will approve. War no longer claims offerings of lives and treasure; peace now demands the sacrifice of prejudices and passion.

JOHN T. HOFFMAN.

SPECIAL MESSAGES.

January 6. To the Assembly: Transmitting the annual reports of the Metropolitan Board of Excise, the Metropolitan Police Board, the Inspector in Chief of steam boilers, the board of Niagara Frontier Police, and the Board of Health of the Metropolitan Sanitary District.

January 7. To the Assembly: Transmitting the annual report of the Board of Commissioners of Pilots.

January 13. To the Assembly: Transmitting the annual report of the Board of Police of the Capital Police District, and of the Captain of the port of New York, and of the Metropolitan Fire Department.

January 14. To the Assembly: Transmitting the report of the Board of Commissioners charged with the construction of the quarantine hospital and boarding station at West Bank. [See note 4.]

January 22. To the Assembly: Transmitting the annual report of Brigadier General E. A. Merritt, late Quartermaster, and the annual report of the Commissioners of Quarantine.

January 22. To the Assembly: Transmitting a communication from Governor Oglesby of Illinois, requesting a modification of the conditions under which an appropriation was made in 1867 to aid in the erection of a monument to the memory of Abraham Lincoln. [See 1867, special message of February 26, and note 19, *ante,* vol. 5, p. 794.][8]

January 25. To the Assembly: Transmitting documents to form an appendix to the annual report of the Metropolitan Board of Health.

January 28. To the Assembly: Transmitting the amount of receipts and expenditures of the Cooper Union for the Advancement of Science and Art.

February 1. To the Assembly: Transmitting the annual report of Brigadier General George W. Palmer, late Commissary General of Ordnance; also a communication from Hon. James A. Bell, Auditor, transmitting copies of two several bonds, in which the city of Albany assumed the liability for any damage to property caused by the making of certain improvements in the Albany Basin;[9] and a communication from the commissioners of the Metropolitan Police in response to a resolution of the House, relative to the pay of patrolmen of the Metropolitan Police Department.

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[8] The judiciary committee of the Assembly, reported adversely on the request from the National Lincoln Monument Association, and the report was agreed to on the 1st of February.

[9] Work on the Albany basin was authorized by chapter 32, passed February 27.

February 11. To the Assembly:

Veto of a bill entitled "An act to authorize the trustees of the First Presbyterian Church and Society of the town of Perry, to convey certain real estate."

"No special legislation is necessary to attain the object of the bill. The Legislature, long ago, very wisely provided by a general law for such cases. It will be seen, by reference to that portion of our Revised Statutes which relates to religious corporations, that the Supreme Court may, upon application, make an order for the sale of any real estate belonging to such corporations, and direct the application of the moneys arising therefrom to such uses as the court may deem to be proper and for the interests of the society.

The wisdom of the Legislature in placing this power, by a general enactment, in the Supreme Court has never been doubted, and need not now be discussed. It may be convenient, in some instances, to obtain authority directly from the Legislature for the sale of the property of a church; but it is always safer to refer the applicants to the court, the rules and regulations of which provide for proper and necessary inquiries into the merits of such application.

I am sorry to be compelled to interpose my veto in the case of a bill of so little apparent importance; but I have long deplored the fact that so many applications are made for special legislation in cases which are or should be covered by general laws. These applications press heavily upon the valuable time of public men, and add largely to the public expenses. They should be discountenanced and discouraged. General laws should be passed to meet, as far as possible, the requirements and wants of the people, and special legislation should always be refused in cases which are already covered by general enactments."

The bill was not passed over the veto.

February 17. To the Assembly:

Veto of a bill entitled "An act to amend section one of chapter 404 of the laws of 1868, relative to building a bridge at Fort Covington."

" The original act authorized the commissioners of highways of the town to borrow three thousand dollars to be expended in rebuilding a bridge across the Salmon river. The present bill increases the amount to four thousand dollars.

By a general act passed April 3, 1849, entitled 'An act to vest in the boards of supervisors certain legislative powers,' &c., it was provided among other things that such boards in the several counties of the State (except New York) might authorize any town in their respective counties to borrow any sum, not exceeding four thousand dollars in one year, to build or repair any roads or bridges in such town, and prescribe the time for the payment of the same, which time shall be within ten years, and for assessing the principal and interest thereof upon such town.

This general law rendered any special legislation in regard to the bridge at Fort Covington wholly unnecessary. The subject properly belonged to the board of supervisors, which for such and certain other purposes is the county legislature.

In a message which I communicated to the Assembly on the 11th inst. in returning a bill without my signature, I called attention to the fact that applications for special legislation in cases covered by general laws, pressed heavily upon the valuable time of public men, and increased largely the public expenses, and I suggested that special legislation should always be refused in cases covered by general enactments.

I feel it to be my duty to take every proper opportunity to urge these views upon the consideration of the Legislature, and to do all in my power to check an evil which has grown to be one of great magnitude."

The bill was not passed over the veto.

February 19. To the Assembly: Transmitting the report of the commissioner of public accounts.

February 23. To the Assembly:

Veto of a bill entitled "An act to provide for raising moneys for the payment of the improvements necessary to be made on roads and bridges in the town of Ellicott in the county of Chautauqua."

"The first section of this bill is identical in language with section 4, article 1, title 1, chapter 16, part 1 of the Revised Statutes, which is the general law defining the amount of money that the commissioners of highways in the several towns of the State may call upon the supervisors to cause to be levied in any one year for roads and bridges, except that by the general law the amount is limited to two hundred and fifty dollars, while by this bill it is increased to one thousand dollars in the town of Ellicott. It is simply a change in this one point of the general law, extending the benefit of the change, if any, to but one town in the State.

If this bill sought to provide for a temporary need of the town of Ellicott, it would be unnecessary, because, under the provisions of another general law, viz., chapter 615 of the Laws of 1857, commissioners of highways may now cause to be raised seven hundred and fifty dollars in addition to the two hundred and fifty dollars above mentioned, if they obtain the consent of the town meeting to such increase.

The second section of the bill now under consideration provides that chapter 615 of the Laws of 1857 shall still be in force as to the town of Ellicott, so that the result of the bill, if it becomes a law, will be that the commissioners of highways in the town of Ellicott will hereafter exercise greater powers than those conferred on the same class of officers in other towns.

I have little doubt, that with the growing desire and need for improvements in our roads and bridges throughout the State, and especially in view of the large increase in the prices of labor and material which has taken place, the sums provided to be raised by the general laws referred to are, or soon will be, insufficient for the average ordinary expenditures of commissioners of highways in many towns in the State.

But I submit respectfully to the consideration of the Legislature, that the remedy is not to be found in special laws, relieving first one town and then another from the inconvenience, but in an amendment to the existing general laws, so that any town in the State can take advantage of it when necessary. This amendment may be made (if in the judgment of the Legislature it is needed) either to the section of the Revised Statutes to which I have referred, or to chapter 615 of the Laws of 1857. In either case it would meet the object sought to be attained by this particular bill, and would also relieve the Legislature from the consideration of many special applications hereafter. I have already, in two instances, expressed to the Assembly my views in opposition to unnecessary special legislation, and I need not repeat them. I regret the necessity which compels me to make this communication, but I feel confident it will receive your approval."

The bill was not passed over the veto.

March 8. To the Senate:

Veto of a bill entitled "An act to provide for filling vacancies in the office of justice of the peace in Lowville, Lewis County."

"There are general laws (see Revised Statutes and chapter 476 of the Laws of 1859,) for providing for filling vacancies in the office of justice of the peace throughout the State.

If the general laws are defective the public interest demands that they be amended. The time of the Legislature should not be occupied, nor should the statute books be incumbered with special acts providing for filling such vacancies in particular towns.

Again, this bill devolves the power of appointment, in case of vacancy, not upon any officers definitely described, but simply upon 'the board, as now provided by law.' The general laws prescribe that these vacancies shall be filled by warrant, under the hands and seals of certain town officers, or of a majority of them; but these officers are not constituted a 'board,' nor recognized as a 'board' for such purpose. I call the attention of the Senate to this inaccuracy in the terms of the bill, because it affords an illustration of the evils of special legislation. Careful examination is not usually given to bills, and the result is the frequent enactment of laws not only unnecessary but ill-considered.

The bill also declares, among other things, that after willful refusal or neglect of duty, for the space of thirty days, by a justice of the peace in Lowville, his office shall be deemed vacant. It seems to contemplate no trial or investigation. The Constitution provides (Article 6, section 17,) that a justice can be removed from office only after due notice, and an opportunity of being heard in his defense, by such county, city or State courts as may be designated by law, for causes to be assigned in the order of removal. Until this legal proceeding be consummated, the office cannot, it appears to me, be deemed vacant.

I object to the bill, therefore, not only because it proposes unnecessary special legislation, but because it is, in my judgment, unconstitutional."

The bill was not passed over the veto. See *post,* p. 74, for a veto of a bill amending the general act of 1859 providing for filling vacancies in the office of justice of the peace.

March 10. To the Assembly: Transmitting a communication received from the Secretary of State of the United States, enclosing a resolution proposing the following amendment to the Federal Constitution:[10]

"ARTICLE FIFTEEN.

"§ 1. The right of the citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude.

"§ 2. The Congress shall have power to enforce this article by appropriate legislation."

March 16. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *March* 16, 1869.

"I transmit herewith, a communication from the Department of State at Washington, with accompanying documents relating to an exhibition of articles for daily household use, which the Netherland Society for the encouragement of manufactures and mechanical industry proposes to hold at Utrecht in Holland, during the latter part of the summer of 1869.

It will afford me pleasure to carry into execution the will of the Legislature, in any way it may indicate, in regard to the subject matter of the communication.

JOHN T. HOFFMAN."

March 17. To the Senate:

Veto of a bill entitled "An act to authorize the appointment of a president pro tempore of the board of Metropolitan Police."

"By laws relating to the Metropolitan police board, certain specified acts can be performed only by the President of the board. He has, I am informed, been unable for several months to discharge his duties, and is now absent from the State. To meet the difficulty caused by his sickness and absence, it is necessary that a new President, or a President *pro tempore,* should be appointed, and to that end this bill has been passed.

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[10] The Fifteenth Amendment was ratified by a concurrent resolution adopted by the Assembly on the 17th of March, and by the Senate on the 14th of April, 1869. This resolution was rescinded by the Legislature of 1870.

There are only three commissioners besides the absent President, and it will be perceived, by a reference to the phraseology of the bill, that it requires the unanimous vote of the three, not only for the adoption of a resolution appointing a President *pro tempore,* but of any resolution whatever.

This is not right. When all the commissioners are present a majority may adopt any resolution. When three only are capable of attending to their duties, the power to defeat a resolution for the appointment of a President *pro tempore,* or for any other purpose, should not be given to one of them.

The board can act only by resolution. If this bill becomes a law either one of the three commissioners can prevent any order being made affecting the acts and duties of the superintendent, the transfer or detailment of patrolmen, the appointment of officers when vacancies occur, or the dismissal of members of the force for neglect of duty or misconduct.

The bill does not therefore meet the difficulty occasioned by the absence of the President of the board, by merely providing as its title indicates, for the appointment of a President *pro tempore;* but it adds to the embarrassments already existing by placing it in the power of one commissioner to overrule his two associates on every question, and in effect to control and direct (with the aid of the superintendent) the whole machinery and business of the Metropolitan police department."

The bill was not passed over the veto.

March 23. To the Assembly:

Veto of a bill entitled "An act to authorize the supervisor of the town of Addison, in the county of Steuben, to borrow money to rebuild bridges in said town, and to pledge the credit of the town for the repayment of the same."

" This bill authorizes the supervisor of the town to borrow (without the sanction of the town meeting or the board of supervisors, as is required by the general laws where a less amount is to be borrowed), a sum not to exceed six thousand dollars, for the purpose of building two bridges in said town, and to issue bonds therefor bearing seven per cent. interest.

It directs the board of supervisors to levy the amount necessary to pay the principal and interest of said bonds, upon the taxable inhabitants and property of the town.

It seems to have been passed upon the petition of a number of the residents of the town, who represent that the bridges must be rebuilt the ensuing year, and that the expense will be at least five thousand dollars.

It is true that the amount provided for by this bill cannot be raised by a loan in any one year and charged upon the town, under the provisions of any existing general law. It is equally true, however, that a very simple amendment to these general laws would enable the board of supervisors, either with or without the conjoint action of the town meeting, to do precisely what this bill authorizes and directs; or would, in case of a pressing emergency, as hereinafter suggested, enable the town authorities to do the same thing.

The bill, therefore, clearly belongs to that class of special laws to which I have already, on several occasions, interposed my objections, and to which I feel constrained to continue my unyielding opposition. My objections in this case may subject the people of Addison to temporary inconvenience, but it is only under the pressure of such inconvenience that we are likely to secure these amendments to general laws which are demanded by the necessities of the people all over the State.

The policy of the State has been for a long time to leave the whole subject of repairing and building bridges (as well as other local improvements) in the hands of the electors and officers of the towns and supervisors of the counties. This became established policy, because of the numerous pressing applications upon the Legislature for special laws. The statute books were filled with these special enactments. General laws were passed to cure the evil, but the wants of the people of the towns having outgrown the provisions of the general statutes, the pressure for special legislation was commenced anew and now continues. The interests of the State require now that all ncessary amendments shall be made at once to these general laws, and that special legislation shall be refused (except in very extraordinary cases), however great may be the temporary inconvenience arising from such refusal.

The boards of supervisors are now authorized (see chapter 314 of the Laws of 1838) to cause to be levied whatever sum may be necessary to repair or construct bridges, and to apportion the amount among the several towns of the county, as shall seem to them to be equitable and just. Under this act they probably cannot charge the entire amount (as this special bill proposes) upon a single town.

The boards of supervisors are also permitted (see chapter 194, Laws of 1849,) to authorize any town, by a vote of the town meeting, to borrow money not to exceed $4,000 in any one year, for the purpose of building or repairing bridges.

I respectfully call the attention of the Legislature to the fact that an amendment to either of these laws, giving to the boards of supervisors greater discretionary powers, would accomplish for every town in the State, when necessary, all that is sought for the town of Addison by the special bill herewith returned (which is merely to raise by a loan $6,000, instead of $4,000), and all that is attempted to be secured by the great number of special bills introduced at every session of the Legislature.

If it be alleged that there is a pressing necessity for the immediate rebuilding of these bridges by reason of injuries sustained since the annual town meeting, and since the adjournment of the board of supervisors, I call attention to the fact that provision has been made by another general law for just such emergencies. (See chapter 103, Laws of 1858, entitled 'An act to provide for the speedy construction of roads and bridges where the same have been damaged or destroyed.') Under this general law the authorities in the town of Addison can rebuild these bridges, and the expense thereof can be levied upon the town. True, the money necessary for the purpose cannot be raised by loan, as is provided by this special bill. If, however, the Legislature deem it wise to authorize town officers to raise money by loan for a term of years upon the bonds of the town, to meet such emergencies, then it is better, at once, to amend this general law of 1858, so that all the towns of the State may have the benefit of the amendment.

My desire is, that the duty and power of taking care of roads and bridges, and other local improvements, shall rest with the people and officers of the towns, and with the boards of supervisors. They know their wants and the merits of local measures better than the Legislature can possibly know them, and the town officers and supervisors are the best and most intelligent representatives of local interests.

It is only by leaving these matters entirely in the hands of the local authorities that the dangers of special legislation can be avoided. In no other way can the Legislature be relieved from the pressure of special applications, which interferes with the due consideration of measures affecting the great general interests of the State at large."

The bill was not passed over the veto. The Governor's suggestion as to a general statute on this subject was embodied in Chap. 855, passed May 11, which conferred on boards of supervisors power to authorize town officers to borrow money for the construction or repair of roads and bridges, issue bonds therefor, and provide for the payment thereof.

March 25. To the Senate:

Veto of a bill entitled "An act to incorporate the Excelsior Temple of Honor Number 23 of the city of Albany."

" There is no necessity for this special bill. The provisions of the general law of the State for the incorporation of benevolent and charitable societies (see chapter 319 of the Laws of 1848, and amendments thereto,) are ample and sufficient for the purpose contemplated.

The originators of this bill, I am informed, were under an impression that by one clause in the general law, secret societies were excluded from its operation; but it will be seen, by reference to an amendment made in 1861, (see chapter 239, Laws of 1861,) that this clause has been stricken from the law.

The number of ' Temples of Honor ' is increasing in this State, and several special bills are already before the Legislature for their incorporation. I therefore promptly return this one in order to call attention to the general laws under which these societies can be readily organized."

The bill was not passed over the veto.

April 6. To the Assembly:

Veto of a bill entitled "An act to incorporate the Rescue Hook and Ladder Company Number One in the village of Bath."

" The statute books contain, every year, a large number of special acts for the incorporation of fire, hook and ladder and hose companies in incorporated villages.

This special legislation is unnecessary, chapter 151 of the Laws of 1847, entitled 'An act in relation to firemen in incorporated villages,' being a general law applicable to the whole State, makes full provision for the organization of fire and hook and ladder companies in all villages by the trustees thereof.

Public policy demands, that these companies should be formed under general laws, and be a part of or connected with the organized government of the village and not independent of it."

The bill was not passed over the veto.

April 6. To the Assembly:

Veto of a bill entitled "An act to incorporate Ours Hose Company No. 4, of the city of Elmira, in the county of Chemung."

"Public policy demands that fire and hook and ladder and hose companies in cities and villages should be connected with and not be independent of the organized local government.

Special bills, like the one herewith returned, have been very frequent in past years, and should be no longer encouraged. If the legislature deem it judicious to organize in cities fire companies, to be independent of the local governments, it will be better to provide therefor by amendments, if necessary, to existing general laws.

The charter of the city of Elmira makes ample provision for the organization within the limits of the city of fire, hook and ladder, hose and ax companies, and this special law is, therefore, wholly unnecessary."

The bill was not passed over the veto.

April 7 and 8. To the Assembly and Senate respectively:

"EXECUTIVE CHAMBER,
ALBANY, *April* 7, 1869.

"I respectfully call your attention to the necessity of some legislation, during the present session, with a view to providing, as soon and as far as possible, a remedy for the evils which arise from the over-crowded condition of our State prisons.

The number of convicts in the State, it is said, has more than doubled since the year 1850. Since the close of the war there has been a great increase of prison commitments, and to-day all our prisons are more than full.

The population of the State is rapidly increasing, and no argument is required to show that the necessities of the State will demand, and that very soon, increased prison accommodations. These accommodations can only be furnished by an enlargement of the prisons already built, or by the erection of a new one.

Experience has shown clearly, that the crowding of large numbers of convicts, in any one prison, is prejudicial alike to the discipline of the institution, and the pecuniary interests of the State.

In my judgment, the existing prisons should not be enlarged; but speedy provision should be made for the proper selection of a prison site, and the erection of a new prison thereon. I need not enter into an argument in support of this recommendation. I respectfully refer you to the report of the special committee appointed by the Legislature during the last session, and to the suggestions of the prison association.

In my annual message, I called attention to the evils and errors which exist in our prison system. I trust that in any new prison which shall be erected, important changes may be inaugurated. I would suggest the propriety of making it a State Penitentiary rather than a State Prison, with a view to its being a place for reformation as well as for punishment, and one to which the least hardened of condemned men might be consigned.

The demand for greater prison accommodation, and better prison management, is growing and must be met. The fact that the prisons which we have now are great pecuniary burdens upon the State will not excuse us from providing new ones. With increasing population we must expect an increased number of criminals and provision must be made for them.

Without further enlarging upon these suggestions, I strongly recommend now the appointment of a commission, either by the Legislature or by the Executive, to select a site for a new prison, subject to the approval of the Legislature; which commission shall also report a plan for the construction of the building, with estimates of the cost, and shall make such suggestions as to the character and management of the prison, when built, as they may deem wise.

As the action of the commission will be subject to future Legislative approval, and as the expenses incident to it will be nominal, I think there can be no objection to the passing of a law to carry out the suggestions here made.[11]

JOHN T. HOFFMAN."

April 8. To the Assembly:

Veto of a bill entitled "An act to authorize the annual town elections in the town of Sodus in the county of Wayne to be held by election districts."

"A bill, with similar provisions, affecting certain other towns, was passed early in the session and received my signature. Under the impression that, in that instance, extraordinary circumstances, known to the Legislature, made it difficult for all the people, in the towns named, to assemble in town meeting at one place in their respective towns, I signed the bill with, probably, less consideration than was due to it.

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[11] Chapter 408, passed April 29, 1869, authorized the Governor to appoint a commission composed of five persons for the purpose of selecting a suitable site in the sixth judicial district, upon which to erect a state penitentiary or industrial reformatory for the reception and treatment of convicted criminals. This movement resulted in the establishment of the Elmira Reformatory. See 1870, note 8, *post* p. 110.

Applications for this privilege of voting for town officers in separate election districts, are becoming frequent. It is evident that they are not confined to cases where it is inconvenient for some portion of the people to reach the common place of meeting, but that, in many instances, this privilege is asked for where the old method of all voting at one general town-meeting, is both practicable and reasonably convenient.

The frequency of these applications brings up, it seems to me, the question whether we are ready to give up the system of town-meetings as now established, for the sake of the convenience, real or supposed, of voting for town officers in separate districts.

Local governments of the same class should be, as far as possible, uniform in character throughout the State. If the Legislature continues to grant these special applications, this desirable uniformity will be lost, and we may soon have the town-meeting, as of old established, abandoned in many portions of the State and retained in others; for the town-meeting is practically abandoned when the town officers are elected at many polls instead of one. The polls being opened at other places, the interest of the people in the proceedings of their town-meeting will be greatly diminished, although it may still be convened for certain purposes.

The most purely democratic of all our governments is the town-meeting. There the whole body of the people meet to deliberate upon matters of common interest; public questions of a local character are discussed, every voter having the right to take a direct part in the discussion; local regulations of a public nature are adopted; money is appropriated; taxes and sometimes borrowing of money upon the credit of the community are sanctioned or refused; all this not through representatives but by direct act of the people at large there assembled. The town-meeting is the legislature of the town. It is of course not intended, by this bill, to do away entirely with the town-meeting; this will still be assembled, for certain purposes other than the election of town officers. The division of the people into separate polling districts for the election of town officers will tend to distract them from the general meeting, at which a large popular attendance is desirable, in view of the important local questions which are often there determined. There will be danger of matters of grave consequence being decided by a very small proportion of the people interested.

If it be deemed wise to change the system of town-meetings, now established as a part of our machinery of self-government, I submit that it should be done by a general law affecting all the towns alike. A proposition to do this would excite general attention, and the Legislature and the Executive would be aided in coming to a decision of the question by the discussion of it among the people. A special law, like this one, fails to excite such general attention.

It must be remembered, also, that if any town embraces within its limits so much territory as to make its government by a general meeting inconvenient, power now resides in the board of supervisors to divide towns, to alter their boundaries, and to erect new towns.

I respectfully call attention also to the fact, that this bill provides for other matters which are not referred to in the title thereof, and that, therefore, being a local bill, it violates section 16 of article 3, of the Constitution."

The bill was not passed over the veto.

April 10. To the Assembly: Transmitting the annual report of the Sailors Snug Harbor in the city of New York, the report of the commissioners for the State of New York of the Board of the Soldiers National Cemetery at Gettysburg, and the report of the commissioners of public accounts on disbursements of bounty moneys.

April 13. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *April* 13, 1869.

"I respectfully call the attention of the Legislature to the necessity and propriety of making the proper appropriation for the support of the Soldiers' Home, located at Albany.

It has been in existence for several years, and affords a retreat for those sick and disabled soldiers of the recent war who belonged to the State of New York, and are now unable to provide for themselves.

The number of inmates varies at different seasons. There are now more than three hundred, all more or less disabled by wounds or suffering from disease contracted when in the army. More than one hundred are now treated as hospital cases, some of them being too feeble to be removed.

The National Asylum, for 'disabled volunteer soldiers,' has now established three permanent 'Homes'—one in Wisconsin, one in Ohio, and one in Maine—and notice has been given that this Asylum is ready to receive, at any of those places, every disabled soldier now at the Albany Home, who has any claims because of 'total disability.' I do not understand the notice to include those who are only temporarily prostrated by wounds or disease. I learn, however, that the fact that the notice has been given has created some doubt and hesitation in the minds of some of the members of the Legislature about continuing the appropriation for the support of our own Home.

I feel it my duty to state the facts, and to suggest that it would be well for as many of the members of the Legislature as may find it convenient, to visit and inspect the Albany Home, with the view of determining what answer shall be made to the following questions which I respectfully submit for consideration.

1st. Shall the Home at Albany be suddenly closed, and the disabled New York soldiers be turned away and compelled to seek a retreat in Maine, Ohio or Wisconsin?

2d. If it is to be closed, what shall be done with those who are too feeble to be removed to those distant points, and what appropriation shall be made to pay for the transportation of those who are willing and able to go?

The responsibility of answering these questions rests with the Legislature; but I respectfully recommend, that the necessary appropriation for the support of the Home for the current year may be made so that it shall not be abruptly broken up. The necessity for its continuance will gradually diminish.

Every year will show a diminution in the number of disabled men who will ask our aid, but it should be given while it is needed.

New York owes it to the soldiers she sent to the war, that they should not be compelled, in their distress, to seek a refuge beyond her own borders.[12]

JOHN T. HOFFMAN."

April 14. To the Senate:

Veto of a bill entitled "An act to authorize the construction of a railroad in 125th Street, and in certain other streets and avenues in the city of New York."

" This bill grants to ninety-six persons named in it, residents of various parts of the State, the privilege and franchise of constructing, operating and maintaining the railroad mentioned in its title, without any limitation as to time, and without any consideration for the grant, except that the grantees shall pay into the city treasury the same license fees as are now paid by other city railroad companies in the city of New York.

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[12] The supply bill, chapter 822, appropriated $50,000 for maintenance of the Soldiers' Home at Albany, and for expenses which might be incurred in removing its inmates to a national asylum.

Only a portion of the city railway companies pay or are required to pay a license fee. Some have been declared by the Court of Appeals exempt from any such liability under the provisions of their charters. Some pay fifty dollars a year for each car, and others less. The requirement, therefore, of this bill to pay the same fees as are paid by other companies may not impose any condition, or mean anything as an obligation. But however this may be, the license fee is only a nominal charge, or nearly so, upon each car, as a matter of police regulation, and it cannot be regarded as a compensation in any sense for the value of the privileges granted. The bill, therefore, as it comes before me, is a legislative grant to certain preferred individuals of a special license privilege and property, to be enjoyed and used by them in the public streets of the city of New York, without any compensation to the people of the State or city for its value. I cannot concur in or give my sanction to any such act of legislation.

The argument has been presented to me that the streets in and through which it is proposed to lay and operate this railroad, are not very important — that the travel thereon, other than that upon the railroad, will not be great, and therefore that an exception should or might be made to the rule which I have always advocated as reasonable and just, that compensation for the privileges granted should be required. I have also been referred to the example of my immediate predecessor, Governor Fenton, who, while he refused to approve certain railroad grants, signed one last year (similar in character to that now proposed), known as the 'Avenue C Railroad Bill,' which provided for the payment of the nominal sum of one thousand dollars per annum by the company into the treasury of the city of New York.

I have also been referred to the example of Governor Morgan, who, in the year 1861, approved of what is known as the 'Ninth Avenue Railroad Bill,' while vetoing other bills of a like character.

I cannot, however, allow this argument or these precedents to control my action in regard to the bill now under consideration.

One Hundred and Twenty-fifth street is the chief thoroughfare of the large and growing district, known as Harlem, in the northern portion of New York Island. If this railroad is required for the convenience of the people of that section, the privileges granted by the bill will constitute property of great and annually increasing value. If it is not required, the grant should not be made. The questions which relate to the merits of all city railroad grants, and the terms and conditions upon which they should be made, are as distinctly raised by this bill, therefore, as if its provisions applied to the more densely populated sections of the city, and embraced a larger number of more important and greatly traveled streets and avenues.

I shall, therefore, as briefly as possible present my views upon the whole subject.

The precedents cited, established by my predecessors, can have no weight with me, because the principles which I hold as controlling, in regard to all these railroad grants, are not in their nature changeable, to be applied, relaxed, or compromised on personal or any other grounds. They are necessarily fixed and immutable.

I hold that these grants belong to the people; that their value should be paid to the treasury of the State or of the city of New York; and that the Legislature has not the right in morals or justice to give them away to any individuals who may be selected for such benefaction.

If the grant made by this bill, or by any one like it, is worth ten thousand dollars per annum, the effect of the bill is to give that sum annually to the grantees, for all future time, without consideration. It seems to me that the simple statement of the proposition is sufficient to show the unjustifiable character of the act.

All legislation should be founded on public reasons and be for public benefit. Legislation is a 'public trust,' and not a mere right to be exercised for private benefit or emolument. It should be as impartially administered and executed as any judicial or other power of government.

Our constitution and our form of government recognize no distinction between classes of the community, and give no right to the representatives of the people to distinguish any individuals, by grants or gifts of public property which are withheld from others. Legislation is in the name of the people — by the people and should be for the people.

Where is the authority from the people for the enactment of a law making to individuals the gift here proposed to be made?

In my judgment, equity demands that the value of these railroad grants should be paid into the treasury of the city of New York rather than into that of the State, and should be applied either to the reduction of the debt of that city or of the annual taxes levied on its citizens. These railroads are to be operated wholly within the city, and by a special use of its streets. These streets have either been dedicated to public use by the owners of adjacent lands or paid for by assessment on such property. They are paved and repaved, lighted and cleaned at the expense of the taxpayers, who also pay for maintaining police and sanitary regulations, and the general expenses of the municipal government. If any revenue can be derived from the use of such streets, it seems to me to be equitable and just that it should be applied to the payment of these expenses.

Ten or more railroads have already been established in the city of New York by virtue of special grants made by the Legislature. None of these railroads have been required to make any payment for the value of the privileges granted, except a mere nominal license fee, or (as in the case to which I have above referred), a nominal annual payment. All of these grants were valuable when made, and some of them were and are of great and increasing pecuniary value. The capital stock of the roads and their profits have been greatly disproportioned to their actual outlay and expenditures. Two of them (and only two), viz: the Sixth Avenue and Eighth Avenue railroads, are required to make monthly returns of their receipts. The receipts of these two companies, during the last year, were as follows:

Sixth Avenue	$618,570.51
Eighth Avenue	783,288.79

From this statement of receipts (which in each case are about double what they were ten years ago), some idea may be formed of the great and increasing value of railroad grants in the city. If all the companies had been required to pay to the city an adequate sum for the value of the privileges granted to them, the debt of the city would have been largely decreased; or if they had been required to pay a yearly compensation in proportion to the yearly increasing value of their grants, the annual taxes levied would have been materially reduced each year, and the people would have been so far relieved from the heavy burdens of taxation.

In my judgment, the Legislature had no more right, in morals, to give away these privileges, and deprive the taxpayers of that city of their just rights in respect to them, than they had to impose a direct tax, of the same pecuniary extent, for the benefit of the persons named in the bill.

I am not opposed to the construction of railroads in the streets of the city of New York. I am aware that additional facilities for travel are required. The improvements being made in the upper portion of the city, occupied for residences, at points remote from the business sections, and the distance to be traveled from the ferries and railway depots to the commercial center create a great and growing demand and necessity for more city railroads. I will gladly give my sanction to any just plan calculated to meet this requirement. But however urgent and pressing may be the inconvenience from the present deficiency in the means of public travel, I cannot consent to give my approval to any measure which, while it may add to the public convenience, violates important public rights or principles, or the true policy of government.

I respectfully submit to the Senate that the just mode of providing additional railroad facilities for the city of New York, would be to authorize the construction of such roads on suitable routes, with careful regulations for the protection of public and private interests, the grant or grants for such roads to be disposed of by the proper authorities of such city, at public auction, to the parties who will agree, with sufficient security to pay to the city the largest sum, in gross, or the largest sum annually, for the privileges granted; or if not at public auction, then in such other way as may be best calculated to make certain a fair and honest disposition of the grants, upon terms which will secure to the city treasury their just and reasonable value.

An act containing such provisions, or framed upon such principles, at the same time providing safeguards for the general public convenience, and for the protection of private rights, would be free from any imputation of favoritism and improvidence, and would secure to the taxpayers a just return for the use of the public property granted.

I respectfully ask, therefore, a reconsideration of the bill herewith returned."

The bill was not passed over the veto.

April 16. To the Senate:

Veto of a bill entitled "An act to aid in the completion of the Whitehall and Plattsburgh railroad, and to amend chapter 103 of the Laws of 1867, and renew the appropriation made thereby."

"In my annual message, in referring to the condition of the State, the burdens resting upon the people, and what they would expect and demand of their representatives, I thought it proper to say as follows:

'While in all public affairs a reasonable liberality is to be encouraged, extravagance and waste will be condemned. A large amount of invested capital has been declared by Congress exempt from the taxation which now oppresses nearly every interest in the country. Those who bear no portion of the public burdens will never be active in opposing their increase. Some will be always ready to favor projects involving great outlays of public moneys in enterprises of real or supposed merit, but the great body of the people will not sanction any expenditures or appropriations, the necessity of which is not clearly apparent.'

In considering any bill which appropriates money from the State Treasury to aid private capital in constructing new railroads, my duty to the people at large requires that I should not overlook the facts that we are in the midst of a period of great speculation; that we are under the influence, to some extent, of depreciated and inflated currency, one of the invariable effects of which is to create an activity more or less feverish, under the stimulus of which men are not likely to discriminate carefully between legitimate enterprises and speculative projects. When this is over, and we return to a sound currency and a more healthy condition, we will estimate more justly the heavy burdens of taxation resting upon us, and will witness a diminution of the profits which some undertakings now earn, and of the promise of profits in others.

I fully comprehend what great benefits may be realized from wisely projected and economically constructed railroads, as well by the State at large as by the localities through which they pass. I would be glad to see their construction pushed forward with energy whenever there is need of them. I should rejoice in seeing the people of the State assist all such enterprises whenever it was apparent that the general interests of the State would be promoted by their success or injuriously affected by their failure. There are, I know, some portions of our territory full of undeveloped riches and yet so sparsely settled that individual energy and home capital are wholly inadequate of themselves to open avenues of transit and communication to and through them, or even to contribute so much towards local improvements as to inspire capitalists elsewhere with that confidence which would lead them to come to their aid. To open such regions to active traffic, to bring them into nearer connection with our great markets, to give to them facilities for communication and transportation which other more favored portions of the State enjoy, may often be so important to the whole State and be so well calculated to add largely to its material and general prosperity as to justify at times and under proper restrictions, the granting of some aid from the Treasury of the State. While, however, it may be wise sometimes to grant this aid to enterprises simply because of their great merit and their great need, the money of the people should never be used to foster and encourage a spirit of speculation, or enterprises which may possibly have their origin in it. Even in cases of great merit, there is one difficulty which suggests hesitation, and that is that a contribution from the State Treasury, in one instance becomes a precedent for many others. Meritorious projects and those purely speculative become linked together and alike appeal to this precedent with equal confidence, and too often, in the present condition of financial affairs and legislative temper, with equal chances of success. Every new railroad corporation thinks it has a right to some portion of the public money, and sends its friends to the Legislature, intent on securing means from the public Treasury, which receives its supply from the contributions of the heavy-burdened taxpayers of the State.

As a general rule, the sagacity of private capital will be quick to see where railroads are needed, where they can be made to pay, and where they will add to the public wealth. It is hardly possible for the Legislature or an Executive to decide these points so well as can be done by the keen sagacity, the willing enterprise, and the careful scrutiny of private capitalists.

General laws have been passed for the incorporation of railroad companies. Liberal facilities are already extended (whether always wisely or not I need not here discuss) to the people in cities, villages and towns, by the issue of their corporate bonds, to associate their corporate responsibility with individual capital, to construct their railroads. Under these circumstances, it seems to me that almost any meritorious enterprise can succeed without State aid, and that such aid should only be granted, if at all, when the necessity is clearly apparent, and when the well-being of the State at large demands it.

The aggregate appropriations proposed to be made from the State Treasury to railroad corporations, by bills introduced at the present session, is over four and a quarter million of dollars, as will appear by the following statement:

Whitehall and Plattsburgh....	Senate	bill	121	$365,000
Albany and Susquehanna........	Ass'y	"	26	100,000
Ithaca and Tonawanda	"	"	665	150,000
Port Jervis and Monticello........	"	"	666	100,000
Buffalo and Washington..........	"	"	667	250,000
Buffalo, Corning and Pittsburgh.	"	"	668	250,000
Northern Air Line..................	"	"	669	175,000
New York Northern..............	"	"	670	600,000

Gloversville, Mayfield and Northville	Ass'y	bill	672	$150,000
Lake Shore	"	"	673	700,000
Southern Central	"	"	674	400,000
New York and Oswego	"	"	675	600,000
Fonda, Johnstown and Gloversville	"	"	676	75,000
Erie Valley and Genesee	"	"	742	125,000
Wallkill Valley	"	"	744	128,000
Rondout and Oswego	"	"	747	150,000
				$4,315,000

Most of these bills have progressed so far as to indicate clearly that the friends of one rely, for success, upon the aid and co-operation of the friends of the others.

The whole amount of taxes levied by the State for schools, canals, bounty debts, railroads, and general purposes in 1868, was $10,343,317.01, being five and four-fifth mills upon the assessed valuation of property. The amount of State aid proposed by the bills above referred to, viz: $4,315,000, is more than two-fifths of the whole State tax of 1868. If a tax were imposed in any single year to provide for this aggregate of State aid, it would make the State tax eight and one-fifth mills, instead of five and four-fifths as in 1868. This bill provides for extending the tax over two succeeding years, which same provision will no doubt be adopted in the other bills. In such case the tax would be increased to seven mills for two successive years.

These figures may well excite alarm. If this bill be successful, it will be likely to be regarded as a precedent and to lead to the success of most, if not all, of the others, and thus to subject the Treasury, to an expenditure of nearly $4,000,000 more, distributed among enterprises of similar character, whatever may be their respective degrees of merit.

It is a fact as apparent as it is deplorable, that whenever heavy demands are made upon the public Treasury for other than the ordinary expenditures of the State Government, influences are at work in and around the Capitol, to secure their success, which are not calculated to promote an impartial exercise of the legislative power; and it may be predicted with almost absolute certainty, if these present applications are successful, that at some future day, and that not far distant, a portion of the very money now drawn from the Treasury of the State will be used as means to secure renewed and increased appropriations for like purposes.

It is confidently alleged that the people of the State will and do approve of these enormous appropriations, and are willing to have imposed upon them these new burdens for the sake of aiding enterprises, the direct profits of which will inure to the benefit of private capitalists. I do not believe it. But even if it were so, I am confident that hereafter, when the feverish period of speculation shall have passed away, and a sounder public sentiment shall prevail, they would, if I sanctioned the legislation to which I now object, hold me accountable and responsible for failing to protect them against great expenditures, in regard to which the probability of waste and extravagance is much greater than the possibility of prudence and discrimination.

It must be remembered that under the Constitution, it is in the power of the Legislature to submit to the people of the State the question whether they are willing to aid these enterprises by the creation of a State debt.[g] Such a mode of coming to their relief would admit of a larger grant of money and a more systematic and equitable application of it to the different sections of the State. The taxation required to meet the outlay could be extended over a period of eighteen years, instead of being forced upon one or two. The fact that no such measure has been brought forward during the time the State aid policy has been pressed, is strong evidence that the advocates of that policy believe that the people at large would not approve of it. If this be so, the people would certainly resent a proposition to collect at once, and without asking their approval, the large sum now proposed to be levied upon them.

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[g] Const. 1846, art. 7, § 12.

For the reasons, therefore, that it is not easy to discriminate so clearly between this measure and those of a similar character now pending and perhaps awaiting the decision of this one, as to make this an exception; that it presents a question of general policy in granting money from the State Treasury to aid in the construction of local railroads, when the burdens of taxation are too great to admit of the heavy addition which the adoption of the policy would entail; that the Constitution provides a wise and just method by which the people of the State can take upon themselves the decision of the question, under which the tax can be graduated according to the magnitude of the improvement to which aid is given; that the measure may be deferred without prejudice to its future consideration at a period when the affairs of the State and country will be in a more permanent condition, when taxation will only be required for current necessities, and when it is hoped a settled prosperity shall be established; I am constrained, without expressing any opinion upon the merits of the Whitehall and Plattsburgh railroad, except to admit most freely that the region through which the road will run has very strong claims upon the consideration and sympathy of the whole State, and that the construction of a railroad through it would contribute very greatly to the general wealth and prosperity, to return the bill without my signature."

The bill was not passed over the veto.

April 20. To the Senate:

Veto of a bill entitled "An act to authorize the Avenue C Railroad Company of the city of New York, to extend their railroad tracks through certain streets and avenues in said city."

"The company was chartered by act of the Legislature on the 6th of May, 1868. Up to this time it has built no portion of its railroad. The bill now before me, amending the charter, gives the company the privilege of laying its tracks in streets and avenues not covered by the original grant; and it does not provide for compensation to be paid therefor into the treasury of the city or that of the State.

It comes within the objections stated by me in a message sent to the Senate on the 14th inst., in relation to the bill authorizing the construction of a railroad in One Hundred and Twenty-fifth street and other streets of the city of New York. I therefore return the bill and respectfully ask its reconsideration."

The bill was not passed over the veto.

April 26. To the Senate:

Veto of a bill entitled "An act to amend an act entitled 'An act to supply vacancies in the offices of justices of the peace in the several towns of this State,' passed April 18, 1859."

"The bill consists of two sections.

The first section provides that whenever a vacancy shall occur in the office of justice of the peace in any town of this State after the annual town meeting in any year, and before the next annual town meeting in such town, certain town officers, or a majority of them, may appoint a person to fill the vacancy, 'and the person so appointed shall hold said office until five days after the then next annual town meeting in said town.'

By reference to article 6, section 17 of the Constitution, it will be seen that justices of the peace are elective officers.

The 5th section of article 10 of the Constitution reads thus: ' The Legislature shall provide for filling vacancies in office, and, in case of elective officers, no person appointed to fill a vacancy shall hold his office by virtue of such appointment longer than the commencement of the political year next succeeding the first annual election after the happening of the vacancy.'

It is obvious that in case of a vacancy occurring after an annual town meeting and before the annual election of the same year, this section would provide that the person appointed to fill the vacancy should continue to hold office after the next succeeding first of January, which would be ' the commencement of the political year next succeeding the first annual election after the happening of the vacancy.' Such provision of law is forbidden by the Constitution.

The second section of the bill provides that when a vacancy shall exist and a justice of the peace shall have been elected in the town, whose term of office does not commence until the first of January following, ' the person so elected shall be appointed to fill such vacancy.'

Article 10, section 2 of the Constitution prescribes that ' all city, town and village officers, " whose election or appointment is not provided for by this Constitution, shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof as the Legislature shall designate for that purpose." '

It is plain that the person pointed out by this act as the one who shall fill the vacancy in the case described in this second section would hold office, while filling the vacancy, neither by election of the electors of the town, or of any portion of them, nor by appointment of the local authorities. The power of appointment, that is, the selection of the person who shall fill the vacancy, is, according to the Constitution, to be conferred absolutely, if conferred at all, upon the local authorities. The Legislature cannot designate in advance what person they shall appoint.

Both sections of the bill are in conflict with the Constitution.''

The bill was not passed over the veto. See *ante,* p. 48, for a veto of a special bill relative to the town of Lowville.

April 27. To the Assembly:

Veto of a bill entitled "An act to declare John Street in the village of Gouverneur a public highway."

'' The forty-first section of chapter 448 of the Laws of 1868, entitled 'An act to incorporate the village of Gouverneur, in the county of St. Lawrence, and to repeal its present charter,' provides that 'the trustees shall have power to lay out, open, make, straighten, widen, extend, alter and discontinue any streets, highways, alleys, lanes, side and cross walks, drains and sewers in said village, and may lay the same through any lands or inclosure, and take and appropriate the lands necessary for such improvements.'

It is manifest that the subject matter of the bill comes within the existing powers of the local authorities. The bill is, therefore, open to the objections already stated by me to the Assembly in previous messages, to unnecessary special legislation.''

The bill was not passed over the veto.

April 28. To the Assembly:

Veto of a bill entitled "An act to incorporate the village of Chateaugay in the county of Franklin."

'' The bill provides that no person shall be entitled to vote ' for the elective officers of the village ' unless he be a freeholder, or shall, within a year preceding, have paid a tax upon property taxable in the village.

It thus seeks to establish a property qualification for those who are to vote for officers elective by the people, and is, therefore, in conflict with the Constitution, which declares, in article 2, section 1, that 'every male citizen of the age of twenty-one years, who shall have been a citizen for ten days, and an inhabitant of the State for one year next preceding an election, and for the last four months a resident of the county where he may offer his vote, shall be entitled to vote at such election in the election district of which he shall at the time be a resident, and not elsewhere, for all officers that now are or hereafter may be elected by the people.' And in article 10, section 2, that 'all city, town and village officers, whose election or appointment are not provided for by this Constitution, shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof as the Legislature shall designate for that purpose.'

The bill is returned thus promptly that it may be amended, if the Legislature see fit, so as to remove the objection."

The bill was not passed over the veto, but another bill was passed incorporating the village of Chateaugay, and became a law, chap. 531, on the 3d of May.

April 29. To the Assembly:

Veto of a bill entitled "An act to authorize the village of Adams to issue bonds for the purpose of aiding in the rebuilding of the Hungerford Collegiate Institute, and to levy a tax for the payment of the same."

"The bill authorizes and requires the president of the board of trustees of the village of Adams, if a majority of the taxable inhabitants of said village shall, at a special meeting, give their consent, to issue its corporate bonds to the amount of $15,000.

These bonds are to be delivered to the Hungerford Collegiate Institute as a gift, the payment of the principal and interest of the bonds being required by the bill to be provided for by a general tax upon the property of the village.

A remonstrance, extensively signed, has been forwarded to the Legislature protesting against this (so far as the unwilling among the taxpayers are concerned) compulsory gift to a private institution; the advantages of which, it is said, can be enjoyed only by the few more wealthy of the people, while the tax is levied in equal proportion upon the homes of those who can afford for their children only the education of the common schools.

It is not, in my judgment, a case in which the Legislature should interpose to authorize a tax to be levied upon the property of the people of a town or village.

Whatever may be said as to the propriety of permitting a town or village, upon the consent of a majority of the taxable inhabitants, to issue its bonds and lend its credit in aid of any public improvement, it does not appear to be just that the creation of a debt should be authorized for the purpose contemplated by this bill and a tax levied upon the property of the people, when a large number of them remonstrate against it."

The bill was not passed over the veto. [See veto Homer Academy bill, May 21, below.]

April 29. To the Assembly:

Veto of a bill entitled "An act to provide for the construction and maintenance of a bridge over the Tioughnioga River in the town of Cuyler, Cortland County."

"The main purpose of this bill (although there is nothing in the title to indicate it) is to charge upon the town of Truxton one-half of the expense of building and maintaining the bridge, which is wholly within the town of Cuyler.

There has been for several years a dispute between the two towns in reference to this subject, and in the month of March, 1866, in a proceeding instituted by the commissioners of highways of the town of Truxton, the Supreme Court decided that the town of Truxton was not liable, as an adjoining town, to unite with Cuyler in building the bridge.

I submit, that, in view of this decision of the Supreme Court, this bill, against which all the town officers of Truxton remonstrate, should not become a law, and I respectfully ask its reconsideration."

The bill was not passed over the veto.

April 30. To the Assembly:

Veto of a bill entitled "An act to amend an act entitled 'An act to amend the several acts incorporating the village of Owego in the county of Tioga,' passed April 9, 1851."

"Section 7 of the bill provides that the village of Owego shall hereafter elect five supervisors, all of them to be members of the board of supervisors of the county, each one exercising the same power as the supervisor of a town. The village is already entitled, by an amendment to its charter made in 1854, to a supervisor in addition to the one elected by the town of which it is a part. By the bill now before me the village would elect five, and the town at large one, making six for the town of Owego.

It is well known that supervisors are not apportioned among the towns of a county with reference to population, but that, as the rule, every town is entitled to one representative in the county board. It is urged upon me, in favor of this bill, that the town of Owego, including the village, so far exceeds in population the other towns of the county that it ought to have a larger representation in the board.

Even upon the principle of proportion to population, this bill would give to Owego more than its share. The population of the county of Tioga is, by the census, 28,163, that of the town of Owego 8,865. Owego would, therefore, if population were the basis of representation in boards of supervisors, be entitled to about one-third of the county board. This bill gives it six supervisors, and there are eight other towns, each of which elects one. The entire board would thus consist of fourteen, out of which number Owego would have six, or nearly one-half.

Again, if population is to be regarded as the basis of representation, there are other towns in Tioga county which have equal claims with Owego to relief. Barton and Candor have each a population of over four thousand; the remaining towns ranging in their numbers from one thousand to three thousand.

It is obvious that this bill would fail to give the county a board representing the people according to numbers. If Owego, with a population of 8,800, be entitled to six supervisors, then Barton and Candor, with populations of 4,000, have almost equal claims each to three.

If the principle is to be recognized that towns should be represented according to numbers, then it should be made general in its application throughout the county, and not confined to Owego. There is, however, an objection to the bill, independent of these details, which, in my judgment, is insuperable. It is this: the title of the bill does not, as the Constitution requires, indicate its full purpose or object.[h] While, by its title, it purports simply to amend the charter of the village of Owego, the bill would work a material change in the government of the county. In any such change the people of the other towns have an interest; yet the title of this bill has afforded them no notice that its provisions were of any moment to others than the inhabitants of the village of Owego."

The bill was not passed over the veto.

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[h] Const. 1846, art. 3, § 16.

May 1. To the Assembly:

Veto of a bill entitled "An act relating to the Jordan Academy and Free school district number four, in the town of Elbridge, in the county of Onondaga."

"By a special act (chapter 43 of the Laws of 1867) the Jordan Academy was 'constituted an academical department in free school district No. 4 in the town of Elbridge,' 'in the manner provided by section 24, title 9 of chapter 555 of the Laws of 1864;' which latter is the general law passed that year to revise and consolidate the acts relating to public instruction.

The Jordan Academy ceased to be an independent institution and passed into the charge of the board of education of the district. It was, among other things, provided by this special act of 1867, that the board of education of the district might fix the terms of tuition in said academical department within certain limits.

But by the subsequent passage of an act (chap. 406, Laws of 1867) to amend the acts relating to public instruction, and commonly known as the free school law, the privilege of requiring payment from the pupils was taken from all departments (academical included) of the public schools. Section 26 of the last named act reads: 'Hereafter all moneys now authorized by any special acts to be collected by rate bill for the payment of teachers' wages, shall be collected by tax and not by rate bill.'

From the operation of this general provision the Jordan Academy, so called, but in fact the school district to which it belongs, seeks now to be exempted. It would remain in full connection with the general public school system, get its share of the public school moneys annually distributed, retain the power of local taxation for the support of its academical department, and yet be at liberty to require payment for tuition from some of its pupils. The teachers employed in and the pupils attending this academical department of free school No. 4 of Elbridge, are reported by the board of education of the district to the department of public instruction as common school teachers and pupils, and are consequently counted towards the *pro rata* share of public money to that district.

The bill is without precedent, and would establish a bad one.''

The bill was not passed over the veto.

May 4. To the Assembly:

Veto of a bill entitled "An act to amend 'An act in relation to a certain highway and highway taxes in the county of Hamilton,' passed April 22, 1867, as amended by chapter 722, of the Laws of 1868."

''I find that the act which this bill proposes to amend directed the Comptroller to pay over certain moneys to the special commissioners named in the act. Out of these moneys the commissioners were authorized to retain certain sums as compensation for their services, their accounts 'to be first audited, allowed and certified by said Comptroller, upon a detailed statement of such services duly verified by the commissioner claiming such compensation, and upon such other evidence as the Comptroller may require.'

It appears that in 1867 the commissioners then in office filed with the Comptroller their report of moneys received and of their charges and alleged disbursements. The Comptroller refused, and still refuses to allow the accounts so rendered. This bill, without making any provision for investigation or re-examination, directs the Comptroller to pay these claims in the form and to the amount presented, and at the same time strikes out the provision in the original act for the future auditing of similar accounts.

I trust the Legislature will agree with me that it is not wise policy to take from the Comptroller the power to audit and adjust these accounts. In cases of this kind it is right that the money should be expended under a sense of responsibility on the part of the commissioners to some supervising authority, and the Comptroller seems to be the proper officer to exert control in such matters.

The bill, in one of the new sections proposed, viz., section 8, confers extraordinary powers on the special commissioners. It provides for a tax upon certain towns for a road which runs wholly through other towns. It requires the commissioners of highways in several towns (through some of which the road does not pass) to assess all the highway tax upon lands owned by non-residents in their respective towns for the benefit of this road. It requires them to deliver the warrants for the collection of these taxes to the special commissioners, who are, by the bill, made overseers of highways for the purpose. The section further provides that, if the ordinary commissioners of highways in the several towns do not, within a certain period, deliver such warrant, then the special commissioners of highways may assess the non-resident tax in the several towns, and as overseers of highways collect it. If the commissioners of highways do deliver an assessment roll and warrant, and these special commissioners deem it defective, they are authorized, as said commissioners, to revise and correct it at discretion.

By another new section, proposed as section 9, the special commissioners are authorized to borrow three thousand dollars on the credit of these highway taxes, and provision is made for the payment by the Comptroller of bonds so issued by them. It is intended, no doubt, that the money so borrowed shall be used for the purposes of this road, but the bill contains no explicit directions on that point.

The special commissioners seem, by the bill, to be invested with power to claim all the non-resident taxes in the several towns so named for a period of years to come; to act as commissioners of highways in all these towns, with unlimited power to levy a tax on non-resident lands; to act, also, as overseers of highways in the several towns, and to collect the tax they themselves have laid; 'as overseers of highways,' to overlook and correct the assessment rolls of the regular commissioners of highways of the several towns, which is for a subordinate to revise and correct the acts of his superior; and at the same time the commissioners themselves are made responsible to no one.

In view of these extraordinary, and it seems to me, unnecessary provisions, I return the bill, and respectfully ask its reconsideration."

The bill was not passed over the veto.

May 5. To the Senate:

Veto of a bill entitled "An act to incorporate the Oswego Pier and Dock Company."

"The bill incorporates twelve persons, named therein, and such others as may join them, as the Oswego Dock and Pier Company; the twelve corporators named in the bill to be directors of the company until Jan'y, 1871.

It gives to this corporation power to 'take any and all lands upon the shore, within fifty feet of high water mark, not now improved or occupied, and all under water adjoining the said shore that may be included within the breakwater built in the Lake, or along the shore,' at an approved value, in the same way that the land might be taken for railroad purposes. This land so taken may be improved by 'filling in, making slips, wharves, piers, warehouses, railroad tracks or such other improvements for commercial or manufacturing purposes as may be desired by the said company.'

The territory within which the company is to operate is defined as 'lands on the shore and under the waters of

Lake Ontario, within the limits of said city of Oswego, outside the Government piers, which now protect and form the harbor of said city.'

The entire water front of the city (except the limited portion between the present piers) is thus given up to the exclusive ownership of a private corporation, and apparently for its exclusive use. The extent of shore thus transferred from the present owners to this corporation is said to be at least two miles.

The purpose and object for which the company is created is nowhere expressly defined, nor in exchange for the great privileges conferred on it, nor any duties to the public enjoined upon it. The bill speaks of a 'harbor hereby authorized,' but it nowhere imposes upon the company the duty of constructing an artificial harbor, nor, in fact, any other duty.

The company, under the bill, may do almost anything; but it is not required to do anything. It may take lands on shore and under water, fill up, build piers, docks, wharves, warehouses, lay railroad tracks, or make 'such other improvements for commercial or manufacturing purposes as may be desired by the said company;' but it is not required to give the use or benefit of these piers, wharves, docks, slips or other improvements to the use of the public on any terms. Upon this point the bill is silent.

The authorities of the city of Oswego are given no power nor control over the changes proposed in its water front; except that, when the improvements of the company come to be connected with the present harbor of Oswego, the connection is to be made 'in such manner as the directors of the company shall determine best calculated to promote their interests, subject, however, to the approval of the same by the authorities of the city of Oswego.'

If the real purpose of the company be the improvement of the harbor of Oswego for public use, that is a matter in which the city authorities or some public agent should have a controlling voice. If the object of the company be simply its own private gain, then the proposed transfer of the lands along the shore and under water from their present owners, without such owners' consent, to this company, would, according to judicial decisions, be taking private property, and not for public uses.

The charter granted to the company is perpetual, and is not subject to modification, amendment and repeal by the Legislature.

The bill would create a corporation clothed with extraordinary powers, no corresponding obligations being imposed on it, and subject to no future control by the Legislature."

The bill was not passed over the veto.

May 5. To the Assembly:

Veto of a bill entitled "An act to consolidate the several school districts and parts of districts within the corporate limits of the village of Johnstown, and to establish a union graded school therein."

" The bill proposes to consolidate the several school districts and parts of school districts within the corporate limits of the village of Johnstown, the consolidated district to be under the control of nine 'commissioners,' who are constituted a body corporate under the name of the 'Board of Education of the village of Johnstown,' and who are to have power, among other things, to hire the 'Johnstown Academy' for an academical department of the schools of said village, and to accept a transfer of said academy whenever the trustees thereof shall, as authorized by the bill, see fit to make it.

These purposes can be accomplished under existing provisions of law, and this special law is therefore unnecessary.

Sections 4, 5 and 6 of title 9 of the general school law, passed in 1864, make ample provision for the establishment and organization of such a union school district, under the control of a similar board of education, by a vote of the people in the territory to be affected.

Section 24 of the same title and act provides for the adoption of any existing academy within the limits of the district, by such board of education, with the consent of a majority of the voters of the district, and of the trustees of the academy.

All the main features of this bill are embodied in existing statutes, general in their nature, and equally applicable to the village of Johnstown as to other localities whose schools are organized under them. In the few details in which it differs from the general act, the bill is open to these objections:

1. The proposed district is not to be distinguished by a number, as school districts usually are, and as it is important they should be, but is to be known only by name as the 'Johnstown Union School.'

2. The persons comprising the board of education are to be styled 'commissioners' instead of trustees, by which latter title they are known in other districts throughout the State. The law already knows one class of officers as 'School Commissioners,' and it seems to be undesirable to create another body of men with other and different duties and powers, to be known by the same name.

3. That officer of the board of education designated in the school law as the clerk, in this bill is named 'secretary.' His duties being, in the main, identical with those of clerks in other union districts, his official title should be the same.

4. Section 21 of the proposed act authorizes the school commissioner of Fulton county, 'whenever he shall deem it for the interest of the parties concerned,' to annex to said union district any lands, premises and territory which, at the time of the passage of the bill, formed a part of any of the districts consolidated by the bill.

Under this provision the school commissioner might, at any time, without consulting the inhabitants who are to be transferred or the officers of the district, transfer such inhabitants and their property to said union district.

The restrictions in title 6 of the general school law upon the alteration of school districts are thus entirely taken away, so far as the territory in question is concerned. Acting under the restrictions of the general law, the commissioner is obliged either to obtain the consent of the trustees of all the districts to be affected by his order, or, if they refuse to consent, the supervisor and town clerk of the town in which such districts are situated may be associated with him in the determination of the matter. There appears to be no good reason why the inhabitants of the territory affected by the proposed act should be denied this safeguard of these restrictions.

If the citizens of the village of Johnstown are opposed to the contemplated consolidation, it should not be forced upon them. If they favor it, they can effect it without the aid of this bill, under existing general laws.''

The bill was not passed over the veto.

May 10. To the Assembly:

Veto of a bill entitled "An act in relation to assessment rolls in the town of Oswegatchie, in the county of St. Lawrence."

"The bill provides that the assessors of the town of Oswegatchie shall hereafter in all assessments for the purposes of taxation, make a roll for each of the wards in the city of Ogdensburgh, and another for that portion of the town not included within the corporate limits of said city, and shall deliver one of said rolls to the supervisor of each ward; and yet, that the warrants issued for the collection of the taxes shall be addressed and delivered to the collector of the town.

The bill is, in my judgment, a needless interference with the details of the duties of town assessors and town supervisors, which are regulated, and no doubt wisely regulated, by the general laws.

The city of Ogdensburgh is a part of the town of Oswegatchie, and its citizens have their share in electing the supervisor of the town, whose jurisdiction as a town officer extends over the city as well as over the rest of the town for all town purposes. So long as the city continues to be a part of the town, it is not right that any of his duties and powers should be devolved upon the ward supervisors, whose jurisdiction is much more limited.

If there be sufficient reason for making the proposed change, then it should be made by a general law applicable to all cities and towns similarly situated."

The bill was not passed over the veto.

May 10. The legislature adjourned without day.

ACTION ON BILLS AFTER ADJOURNMENT OF THE LEGISLATURE.

May 21.

Veto of the following bills: "An act to increase the rate of commutation of sentence to be earned by convicts under the provisions of section 2, chapter 417, of the laws of 1862, and the laws amendatory thereof."

"The present law is sufficiently liberal and works well. It gives assurance to convicts that patience in well-doing will ensure moderate rewards, and that is enough. Frequent changes in it are not to be encouraged.

Moreover, the commutation law places, to a certain extent, the power of liberating the prisoner, before his sentence is expired, practically, in the hands of the wardens. The Governor has no means of checking their returns of good conduct, which are not made periodically, but only as (by commutation) the sentence is about to expire. The present law leaves quite enough power of this nature in their hands."

"An act to incorporate the Bethlehem Mutual Insurance Association, and to ratify its proceedings."

"If this Company desires to have enlarged powers it should reorganize under existing general laws. Such power should not be conferred by reference (as in this bill) to an act which has been repealed."[1]

"An act to amend the charter and to confer additional powers upon the trustees of the village of Jamaica."

"The amendments, among other things, provide for the assessment of damages in cases of taking private lands for public uses by commissioners to be appointed by the village trustees.

This is clearly unconstitutional. See article 1, section 7, Constitution of New York."

"An act to incorporate the Harlem Yacht Club."

"Because the objects sought can be attained under existing general laws."

"An act to facilitate the extension of the Schoharie Valley Railroad."

"First section defective in allowing 'name of any person written by his or her order,' &c., to be proof of consent to bonding, without requiring any evidence of genuineness of signature or knowledge of contents.

Moreover, the bill, the title of which relates to Schoharie Valley Railroad only, makes provision for subscription of bonds not only for that, but for another road called the Gallupville Railroad."[J]

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[1] Const. 1846, art. 3, § 17.

[J] Const. 1846, art. 3, § 16.

"An act to amend an act entitled 'An act to incorporate the New York and Long Island Bridge Company, for the purpose of constructing and maintaining a bridge over the East River, between the city of New York and Queens County," passed April 16, 1867."

"The third section gives unlimited power to the Common Council of New York to subscribe for capital stock, or to guaranty the entire principal and interest of the bonds of the company, which is a private corporation."

"An act to incorporate the Staten Island Bridge Company."

"The title of the bill does not indicate its real character or objects. The bill in fact incorporates a Ferry and Warehousing Company with extraordinary and almost unlimited powers, and with authority to erect such structures as it pleases on the shoals or shallows in the Bay of New York, from Ellis Island past Robins Island, and to appropriate the structures so erected to 'any uses to which they may be adapted.'"[k]

"An act to fix the bail of the overseer of highways of the town of Hamburgh, in the county of Erie."

"No good reason is assigned for making this town, by special act, an exception to other towns in the State."

"An act authorizing and requiring the town of Olean, in the county of Cattaraugus, to purchase and acquire title in said town for Buffalo and Washington Railroad Company."

"Bill makes it the duty of certain town officers to purchase right of way for the Company, and the Supervisors are required to levy tax to pay the same. The Company is to deliver its stock to the town in payment. No provision is made for obtaining consent of majority of taxpayers, as is required in cases where towns are bonded for railroad purposes."

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[k] Const. 1846 art. 3, § 16.

"An act to restrain dogs from running at large in the county of Rockland."

"Because it is improper legislation. The county judge should not have such duties devolved on him."

"An act to amend an act passed April 13, 1819, entitled 'An act to incorporate the members of the Genesee Annual Conference.'"

"Because it is the same as Senate bill No. 1, passed March 11, 1869, (see chapter 38, laws of 1869.)

"An act to extend the time for taking avail of certain provisions of Chapter 804 of the laws of 1868, entitled, 'An act for the disposition of the surplus money arising from sales, pursuant to part three, chapter eight, title fifteen of the Revised Statutes, entitled 'Of the foreclosure of mortgages by advertisement.'"

"The reference to 'the provisions of the second section of chapter 804, of the laws of 1868,' made in the second section of this bill, is evidently erroneous."

"An act to widen and improve North Second Street, in the city of Brooklyn, and to regulate, grade, and pave the same."

"Because the bill sent to me is the original Senate bill. It passed the Assembly with an important amendment, of which amendment the Senate appears to have had no notice."

"An act to amend chapter 624 of the Laws of 1866, entitled 'An act to authorize the towns of Wilna, Champlain, Rutland, Watertown, Hounsefield, Philadelphia, Theresa, Clayton, Alexandria, Orleans, Brownville, Antwerp, Pamelia, and Le Ray, in the county of Jefferson, and the towns of Greig, Watson, New Bremen, and Croghan, in the county of Lewis, to issue bonds, and subscribe and take, for said towns, capital stock in the Utica and Black River Railroad Company.'"

"Because, in effect, it dispenses with proof of consent of taxpayers, required by the original act."

"An act to provide for widening West Street, in the city of New York, on the westerly side thereof, from Battery place to Hammond street."

"1st. Large number of property holders remonstrate.

2d. The municipal authorities have power, under existing laws, to order the work to be done and the expense to be assessed on property benefited. No special legislation necessary.

3d. I am opposed to the clause in this bill which puts three-fourths of the expense on the city at large."

"An act to open and construct a road from Stony Creek, in the county of Warren, to Wellstown, in the county of Hamilton."

"Bill defective: 1. In not defining the power of commissioners. 2. In not defining the lands the taxes upon which are to be applied. These lots are all known in the Comptroller's office by numbers, and there is no way of determining where the three-mile line would divide the taxes. The provisions of the bill cannot be executed."

"An act to provide for the erection of a Public Market in the Twenty-first ward of the city of New York."

"All new markets in New York should be built by associations of market men, or by other private persons with private capital.

The public market system has not worked well, and should not be extended.

If there be sufficient demand for a market in the Twenty-first Ward, abundant private capital will come forward and construct it."

"An act to alter the map of the 'Commissioners of the Central Park, so far as it establishes a road or public drive running westerly of the Eleventh avenue from One Hundred and Fifty-sixth street north to the junction of said drive with the old military road, on the property of the Institution for the Blind."

"A personal inspection of the route of the Boulevard, as laid out and as proposed to be changed, satisfies me that the change is not desirable. But, beyond that, so long as a competent commission is charged with the duty of laying out the Boulevard, special legislation effecting changes should not be had at the instance of interested parties, unless the benefit to be derived therefrom is clear beyond all question."

"An act to repair the State works on the West Branch of the Oswegatchie river to improve the navigation thereof, and the hydraulic power connected therewith."

"The works referred to are not State works, although the State has contributed towards their erection. If the State is to spend any more money upon them the State Engineer should have superintendence of them. Except that report is to be made to the Comptroller, no State officer has any connection with the work.

Moreover, it seems to me better that the necessary expense of the improvement should be raised by assessments, as provided in the case of the Great Chazy river, chapter 289, Laws of 1868."

"An act to amend chapter 628 of the Laws of 1857, entitled 'An act to suppress intemperance and to regulate the sale of intoxicating liquors.'"

"The amendment substitutes 'a majority of Excise commissioners' in place of 'County court of sessions,' to revoke licenses. If the Court of Sessions is to be superseded at all in this matter, it should be by the Board of Excise, not by a majority of it."

"An act to authorize the inhabitants of the town of Homer to issue bonds for the completion and endowment of the Cortland Academy at Homer."

"This bill does not differ sufficiently from Assembly bill No. 472, authorizing a tax on the village of Adams for the Hungerford Institute, to take it out from the operation of the principle I laid down in my veto message of April 29, upon the last named bill. However meritorious may be the object sought by the bill (and I believe it to be a meritorious one) I cannot recognize the right of a majority to tax the minority for the purpose of a gift of money to a private school, academy, &c. The admission of free scholars from Homer does not make it a public school.''

" An act to provide for the correction of errors in the equalization of the assessments in the county of Columbia as made by a board of supervisors."

'' If the policy declared by this law is a good one it should be made general, and not applied to a single county.

I cannot, however, admit the propriety of the appointment of a commission which, in the matter referred to in the bill, shall have power to overrule the board of supervisors.''

" An act to prevent nuisances near public schools."

'' This bill may injuriously and unnecessarily affect legitimate business now established near public schools, as, for instance, 'livery stables or private stables,' not *per se* nuisances. The bill not merely forbids the future erection of such buildings, but for the future *use* of them. It might, therefore, prevent the free and lawful use of property by the owners thereof.''

"An act to incorporate the Clyde Water Works Company."

'' Section 5 authorizes ' the corporation hereby created,' 'to take, hold, and sell the bonds and securities of said village or of any other corporation;' it was obviously not the intention of the Legislature to confer such broad powers upon a water works company.''

" An act to facilitate the construction of railroads in the counties of Allegany, Cattaraugus, Monroe, and Wyoming, and to authorize the towns therein to subscribe to the capital stock thereof."

'' On May 18, 1869, I signed the general law providing for the Bonding of towns, &c., for railroad purposes, which is carefully drawn and well guarded.

The objects of this bill can be attained under the General Law. Special acts for such purposes are no longer necessary."

See L. 1869, chap. 907.

"An act to authorize Smith and Parmelee Gold Company to issue a preferred stock."

"The bill provides for the conversion of the whole or any portion of the stock of the company into a preferred stock, upon the consent of a majority of its stockholders. It does not protect the rights of the minority, as no stockholder can convert his stock unless he elects within twenty days after service of a notice personally or by mail.

No stockholder should be deprived of rights or property, by the mere depositing in the post office of a notice directed to him."

"An act to restore the channel of the Oswego river, at the city of Oswego, to its capacity before the enlargement of the Oswego canal."

"No obligation exists on the part of the State to do the work contemplated by the bill, and the State Engineer reports, after examination, that it would involve a large expenditure for which the State should receive no benefit."

"An act to raise money to build a bridge in the town of Carrol, Chautauqua county, N. Y."

"The bill fixes not only the maximum but the minimum expenditures of the Highway Commissioners.

The object of the bill can not be attained under General Law of 1869, enlarging powers of Board of Supervisors."

"An act to amend 'An act to confer additional power upon the Metropolitan Police, relating to the inspection of steam boilers,' passed April 9, 1862."

"Policemen who are relieved from patrol duty are detailed for the special work referred to in this bill. It is much easier than patrol duty, and, like all detailed positions, much sought after on that account. The Commissioners have not suggested extra compensation, and there is nothing to justify it.''

"An act prohibiting the Board of Commissioners of Excise, in the counties of Allegany and Cattaraugus, from granting licenses to sell strong and spirituous liquors and wines upon the Allegany and Cattaraugus Indian reservations, in this State."

''The selling or giving of liquor to an Indian is now forbidden by law (chap. 420, Laws of 1849). To the white people within the district, the same laws should be applied as in other parts of the State.''

"An act to authorize the Mill Brook Log Company to improve Mill Brook, in the county of Warren, leading from Lake Pharaoh to Schroon lake, by the erection of dams and otherwise, and to provide for appointing appraisers to appraise the damages that may accrue to land-owners along said stream, on account of the use of and running of logs by said company."

''Mode of appointing commissioners for assessing and determining damages unconstitutional.''[1]

"An act to incorporate the Fifth Avenue Savings Bank of New York."

''Section 3 omits to define the number of trustees who shall constitute a quorum; the omission is in the printed bill also, and it must have passed in that shape.''

"An act to amend chapter 350, of the Laws of 1862, being an act entitled 'An act authorizing the Supervisor of the town of Hempstead, in Queens County, to call a special town meeting, to determine by ballot whether the public lands of said town, called the Hempstead Plains, shall be sold or not,' passed April 19, 1862."

''There are several thousand acres of Hempstead Plains which the amended bill declares shall be sold in 'one parcel.' I do not believe the amendment is calculated to secure a fair sale. The reverse is pretty certain."

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[1] Const. 1846, art. 1, § 7.

"An act to authorize the commissioners of highways to construct bridges in the town of Ellisburgh, county of Jefferson, and to levy tax for that purpose."

"Provided for by general laws. Town meeting may levy $1,250 for the purpose in any year. Board of supervisors may authorize any town to borrow $4,000 for same purpose. If the sum required be larger than this, the commissioners should not be authorized to borrow without consent of superior authorities, nor the supervisors directed to levy what the commissioners choose to borrow, as this bill provides. No limit is imposed by the bill."

"An act to authorize the New York River Road Company to construct certain railroads in the city and county of New York and across the Harlem River."

"Amendments to this bill were made in the Senate, and it was sent to the Assembly for their concurrence therein. Some members of the House inform me that the Assembly did not thereafter act on it. The Clerk thinks it did not. The Assembly journal, nevertheless, shows concurrence; after which the bill should have been sent to the Senate to be signed by the President thereof. The usual message in such cases from the Assembly to the Senate is not found with the bill, and the Senate journal does not show that the bill was returned to it. In case of its return, the bill would have been sent by the Senate Clerk to the President of the Senate to be signed, whereas the Journal Clerk of the Assembly admits that he took it directly to the President of the Senate and obtained his signature; he must have done so by managing to place it among the bills then regularly before him from the Senate. This was irregular and contrary to positive orders from the Lieutenant-Governor and the Clerk of the Senate.

The Assembly Journal Clerk could have had no motive for carrying the bill himself to the President of the Senate, if, by regular action of the two houses, it had been properly on its way to that officer. The Senate's journal is, no doubt, correct. The bill was not returned, as it should have been, to the Senate, and I decline to sign it."

1870. JANUARY 4. LEGISLATURE, NINETY-THIRD SESSION.

JOHN T. HOFFMAN, Governor.

ANNUAL MESSAGE.

Executive Chamber,
Albany, *January* 4, 1870.

To the Legislature.—By the Constitution, the Governor is required "to communicate by message, to the Legislature, at every session, the condition of the State, and recommend such matters to them as he shall judge expedient." I proceed to discharge this duty.

State Debt.

The total net amount of the State debt was, on the 30th of September, 1868, thirty-eight millions, eight hundred and sixty-four thousand, four hundred and forty-eight dollars and seventy-four cents......	$38,864,448.74
It was, on the 30th of September, 1869, thirty-four millions, eight hundred and forty-eight thousand, thirty-five dollars and seventy-three cents....................	34,848,035.73
Reduction during the year, four millions, sixteen thousand, four hundred and thirteen dollars and one cent...	$4,016,413.01

Of this debt, there was in existence before the late war, twelve millions, seven hundred and twenty-five thousand, two hundred and ten dollars and ninety-six cents.	$12,725,210.96
The residue is the unpaid portion of the bounty debt incurred during the war, twenty-two millions one hundred and twenty-two thousand, eight hundred and twenty-four dollars and seventy-seven cents..................................	22,122,824.77

The Sinking Funds, at their present rate of application, will extinguish the entire State indebtedness within eight years.

Interest on the State Debt.

I recommend that provision be made for the payment in coin, or its equivalent, of the interest on that portion of the State debt which was incurred before the late war, and of the principal thereof as it matures. It was contracted in specie, and the honor and good faith of the State forbid that either interest or principal should be paid in a depreciated currency. Failure to pay this interest in gold occurred first in 1863, and has continued to this time. This failure was bad faith and bad policy. The State has for seven years been repudiating a portion of its obligations, and I trust you will take prompt measures to save it from further dishonor.[1]

The Bounty Fund Debt was contracted in our present currency, and the holders of the bonds claim nothing more than payment in the same.

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[1] See special message of April 21, in which the Governor again urged the payment of interest in coin.

Receipts and Payments of the State Treasury, During the Last Fiscal Year, on Account of all the Funds, Except the Canal and Free School Funds.

Balance in treasury on the 30th of September, 1868, seven hundred and forty-eight thousand five hundred and twenty-one dollars and forty-one cents	$748,521.41
Receipts of the year, seventeen millions forty-five thousand eight hundred and twenty-six dollars and forty-four cents	17,045,826.44
	$17,794,347.85
Payments of the year, seventeen millions, five hundred and thirty-two thousand, four hundred and thirty-five dollars and sixty-eight cents	17,532,435.68
Balance in the treasury on the 30th of September, 1869, two hundred and sixty-one thousand nine hundred and twelve dollars and seventeen cents	$261,912.17

TAXES.

The State tax levied in 1869 was five and five-eighths mills, for the following purposes:

For schools	1¼ mills
canals	⅞ mill
general purposes	1¼ mills
bounty debt	2¼ mills

The whole amount of State tax levied was ten millions, four hundred and sixty-three thousand, one hundred and seventy-nine dollars and thirty-three cents ($10,463,179.33).

Canals.

The following statement shows the condition of the Canal Fund in the last fiscal year:

Balance in treasury and invested on the 1st October, 1868, four millions six hundred and ninety-eight thousand nine hundred and twenty-two dollars and forty-four cents	$4,698,922.44
Received up to 30th September, 1869, six millions one hundred and nineteen thousand nine hundred and eighty-five dollars and seventy cents	6,119,985.70
	$10,818,908.14
Paid during the year ending 30th September, 1869, six millions nine hundred and sixty-three thousand nine hundred and sixty-three dollars and fifty-five cents	6,963,963.55
Balance now on hand, three millions, eight hundred and fifty-four thousand, nine hundred and forty-four dollars and fifty-nine cents	$3,854,944.59

Revenues of and Expenditures for the Canals During the Last Fiscal Year.

Receipts from tolls, rents, interest on current revenues and miscellaneous, four millions one hundred and sixty-one thousand two hundred and eighty dollars and ten cents	$4,161,280.10
Payments for all expenses, one million two hundred and seventy-eight thousand five hundred and seven dollars and fifty-two cents	1,278,507.52

Leaving a surplus revenue of two millions eight hundred and eighty-two thousand seven hundred and seventy-two dollars and fifty-eight cents......	$2,882,772.58

Which has been applied, in conformity with article seven of the Constitution, as follows:

Sinking Fund under section 2, one million five hundred thousand dollars............	$1,500,000.00
Sinking Fund under section 3, one million three hundred and eighty-two thousand seven hundred and seventy-two dollars and fifty-eight cents....................	1,382,772.58
	$2,882,772.58

For the details of the State debt and expenditures, the business of the canals, their revenues, expenses and condition, I respectively refer you to the official reports of the Comptroller, State Engineer, and Canal Auditor.

I need not repeat my general suggestions of last year in reference to our canals, and the special and important relations which they bear to the commerce and business, not only of our own State, but of the great northwest. It is the duty, as it is the manifest interest of the State to foster and protect them; more so now, even, than before the construction of the lines of railway which connect the western and northwestern States with the seaboard. These canals, built before the days of railroads, to facilitate internal commerce, to furnish a cheap and easy avenue of transportation for the products of our own and other States through the interior to the Hudson river, still form, as I have said in a former message, an indispensable link in the chain of water communication which continues to be of great power and value, notwithstanding the improvements in the method of land transportation. Properly managed, they will not only serve the original purpose of their construction, but will act as a check upon exorbitant charges of railroad corporations, and thus keep down the price of transportation for the various articles moving eastward and westward, to the mutual benefit of producer and consumer.

The necessity and value of water communication is as well recognized everywhere now as heretofore. Within a few days I have been applied to for information upon the subject for the guidance of public men in Europe, who have in view a system of canals on a very large scale, which shall connect Berlin and Dresden, and Berlin and Frankfort-on-the-Main, and other important points. At the request of the Governor of Iowa, also, I appointed, last autumn, delegates to a convention held for the purpose of promoting improvement in the navigation of the Wisconsin river; a work in which the people of this State have a deep interest, as it will make in connection with our canals, water communication complete from the Mississippi river to the city of New York. Canals do not as some say, belong to a past age, nor are they superseded and rendered useless by the construction of railroads. Both canals and railroads are essential to the full and rapid development not only of our own State, but of our great northwestern neighbors, whose interests and prosperity are so firmly interwoven with our own.

To the great grain producing States of the west cheap transportation to the seaboard is a necessity, and especially so now when the prices of their products are low. It is no less necessary to the people of New York to have cheap transportation from the west; for our own agriculture no longer furnishes us with all the articles of food we require. Other States can compete with us for the great trade to and from the west by means of railroads; but they cannot in the traffic by canals, for they have not our advantages in the natural level of surface.

In affording water transportation at low rates through the length of our State we are contributing at once to our own prosperity and that of others. The business relations between New York and the States referred to have always been close; it is our interest as well as theirs that these relations should be maintained and extended. For their sake as well as our own every barrier to a full and free interchange of the products of their industry and ours should, if possible, be removed. Our canals were not constructed with the narrow view of levying a tax upon commerce, that the State might, thereby, make money; they were built for the purpose of affording facilities to the internal trade of the country. The tolls should, therefore, be put at low rates, and the canals be made free as far and as fast as is practicable.

In the administration of the canals, there should be a wise and prudent economy; but in regard to this great interest the State cannot afford to be parsimonious. The problem for solution is not merely what is cheapest for the time, but what is the best system for managing the canals so that the State and the people everywhere may realize, to the fullest extent, now and hereafter, the great advantages they were designed to secure. Experience has shown that they cannot, under existing laws, be so managed as to ensure the best results for the State or for those who are engaged and interested in the business of transportation. The contract system for repairs has proved a failure, and I renew my recommendation of last year that it be abolished.[2]

Various objections have been and may continue to be interposed to other methods, and it may be difficult to secure an agreement in the Legislature upon any specific plan of management.

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[2] The contracting board and the system of repairing canals by contracts were abolished by chapter 55, passed March 10.

In view of this possibility and as the Constitution provides that the canals shall remain the property of the State and be under its management forever,[a] I respectfully recommend that discretionary powers, to the fullest extent permitted by the Constitution, over the canals and everything connected with the working of them, be conferred upon the Canal Board, to the end that they may adopt the best practical plan or combination of plans. They are a constitutional body which it seems to me may be properly charged with such responsibility and duty.[b] In their hands the State might be enabled to realize all the benefits of both the contract and superintendent system, and be saved from the evils incident to either alone. They could establish and enforce such police regulations as would protect those engaged in navigation against the obstructions and delays to which they are now often needlessly subjected. They could contract for repairs when, in their judgment, it was most advisable, and they could have work done under superintendents when they considered the interests of the State would be thereby subserved. They could use what is good and reject what is bad in any system, and, knowing, as they are bound to know, the whole work and its necessities, could, through the proper offices, secure the best practical results, with the lowest possible expenditure.[3]

It seems very certain that important reductions may be made in canal tolls. Every interest demands that such reductions should be made. I am informed that the Canal

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[a] Const. 1846, art. 7, § 6.

[b] Const. 1846, art. 5, § 5.

[3] By chapter 55, passed March 10, which abolished the canal contracting board, it was made the duty of the Canal Board "to determine the method or system by which the repairs of the canals shall be made, and their management conducted, and fix the rate of compensation to be paid to any and all the officers which said board is now authorized by law to appoint."

Board will recommend lower rates, and I ask the prompt concurrence of the Legislature.[4]

The State Engineer will, in his report, recommend certain specific improvements. I ask for his recommendations your most favorable consideration.[5]

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[4] The Legislature by concurrent resolution, adopted by the Assembly on the 9th of April, and the Senate on the 13th, authorized the Canal Board to reduce canal tolls not exceeding 50% below the rate established by the toll sheet of 1852. The subject of reducing tolls was also included in chapter 379, passed April 25, "to provide for the payment of the canal and general fund debt, for which the tolls are pledged by the Constitution," which act contained a provision authorizing the Canal Board "to fix, regulate, and reduce the rates of toll upon the canals of this State, in such manner and to such extent as they may deem expedient to promote the trade and commerce of the State, and to prevent a diversion thereof. And it shall be the duty of the said board to exercise this authority in such way as to secure to the canals of this State the greatest practicable amount of tonnage and transportation."

The same act provided for a loan to pay the canal and general fund debts. According to the Comptroller's report the canal debt on the 30th of September, 1869, was $12,564,780, the general fund debt $4,694,526.40, amounting to $17,259,306.40. The act was to be submitted to the people at the November election in 1870. The act was rejected by a vote of 253,992 to 329,237.

[5] Chapter 576, approved May 2, authorized the formation of a corporation to introduce on the canals the European system of steam towing, and for that purpose, to "submerge or place one or more chains or cables, on the bottom of the canals of this State, and attach the same thereto in such manner as will not interfere with navigation, and shall have the exclusive right to use such submerged chains and cables designated and known as the European system, in the prosecution of the peculiar method of towing." The act contained details as to the method of applying and operating the new system.

Another act, chapter 655, approved May 5, also authorized the formation of a corporation to introduce an improved system of steam towage upon the canals "by the use of chains, cables or rails suspended over the canal, under a patent or patents to be held or acquired by said corporation, with the exclusive right to use the said system thereon" during the existence of the corporation.

Chapter 767, approved May 9, imposed a tax of one mill on a dollar for construction of new work upon and extraordinary repairs of the canals.

Chapter 788, approved May 18, appropriated $425,000 for the improvement of the Champlain canal so as to give it a general depth of seven feet, and a general width of forty-four feet on the bottom, and fifty-eight feet at water surface.

Chapter 767 was sustained in People ex rel. Williams v. Dayton (1874), 55 N. Y. 367.

EDUCATION.

I submit the following statement in relation to common schools for the year ending September 30, 1869:

Total receipts from all sources, including balance on hand at the commencement of the fiscal year	$11,310,852.22
Total expenditures	9,884,828.36

More than six millions was paid for teachers' wages, and nearly two and a half millions for school houses, sites, repairs, and furniture. The exact figures will appear by the report of the Superintendent of Education.

There are in the State nearly one million and a half of children of school age, about a million of whom attended the public schools during some portion of the year; while one hundred and twenty-six thousand were attending private schools.

Six normal schools are also in full operation; the attendance on which, in the aggregate, amounts to four thousand two hundred.

The total number of public school houses is eleven thousand six hundred and ninety-eight; and the estimated value of these, with their sites, is more than eighteen millions of dollars.

These facts show the great proportions to which our common school system has grown. There may be defects in it, but taken as a whole, it commands and receives the hearty commendation and the cordial support of the great body of the people. Under our form of government, in which the voice of the people is so potential, the State has a direct interest in so educating the masses that they may intelligently understand their duties as citizens; and no tax should be paid more cheerfully than that which enables all, without reference to station or condition, to acquire the rudiments of a good English education. The Legislature should do all in its power to sustain and perfect a system which aims to accomplish this result.

The condition of the colleges and academies of the State will appear from the annual report of the Regents of the University.

STATE PRISONS.

The report of the Comptroller will show, in detail, the expenses and earnings of the several State prisons during the past year, and give the necessary explanations thereof.

There have been, during the year, mutinous disturbances among the convicts, and the expenses of the prisons seem to be largely in excess of the earnings. I renew the objections made in my last annual message to the contract system for the employment of the prisoners' labor. It is a vicious one and should be abandoned.[6]

The discipline of the prisons has been seriously affected by legislation which has deprived their officers of nearly all discretion in regard to punishment. I think the chief officer of each prison should be clothed with the fullest discretionary powers in relation to the character and amount of punishment, subject to the restriction that it shall be inflicted only in his presence.

I submit to the Legislature that the subject of prison management has become one of very great consequence and demands earnest attention. More concentrated responsibility is needed, as well as protection against frequent changes of administrative officers. It is doubtful whether such results can be attained without an amendment of the Constitution[c] making an entire change in the system.[7]

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[6] The Legislature adopted a concurrent resolution authorizing the Governor to appoint a commission composed of three persons whose duty it should be to examine and consider the whole question of convict labor.

[c] Const. 1846, art. 5, § 4; am. 1876.

[7] The subject of changing the system of prison management was considered by the Constitutional Commission of 1872, which reported a provision for a Superintendent of State Prisons, to be appointed by the Governor. A constitutional amendment (article 5, section 4) covering this subject was adopted in 1876.

The commissioners appointed by me, pursuant to chapter 408 of the Laws of 1869, to select a site and submit plans for the construction and management of a State penitentiary will, I am informed, make their report to the Legislature at an early day.[8]

I have visited, during the year, all the State prisons, and given personal hearing to large numbers of convicts who desired to present applications for executive clemency. The total number of applications for pardon and commutation of punishment, presented personally or in writing, and examined by me, is about six hundred. Eighty-six pardons, and twenty commutations have been granted. A full statement of the names, and of the reasons in each case, will be transmitted to you hereafter.

SALT SPRINGS.

The quantity of salt inspected from the Onondaga salt springs, during the last fiscal year, was eight millions five hundred and thirty-four thousand six hundred and sixty-one bushels, a decrease of production, compared with the previous year, of two hundred and fifty-eight thousand eight hundred and fifty-three bushels. The revenue for the year, from all sources, was eighty-five thousand five hundred and thirty-one dollars and sixty-one cents; the expenses, forty-six thousand three hundred and eleven dollars and fifty-nine cents; the net revenue received by the State being thirty-nine thousand two hundred and twenty dollars and two cents.

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[8] The Commission on a State penitentiary located the reformatory at Elmira, and the location was confirmed by chapter 108, passed March 28. Chapter 427, approved April 27, provided for the erection of the necessary buildings, authorized the creation of a board of managers on the completion of the buildings, and prescribed the details of administration. Contract labor was prohibited in the reformatory. The act carried an appropriation of $75,000.

INSURANCE.

The number of insurance companies subject to the supervision of the Insurance Department was, on the 1st of December, 1869, two hundred and sixty-two.

Of these, many are incorporations created by other States or by foreign countries, doing business within this State.

The total amount of stock and mortgages held by the department for the protection of policy holders of life and casualty insurance companies of this State, and of foreign companies doing business within it, is six million seven hundred and thirty-six thousand and ninety-two dollars. Of these, the value of four millions sixty-one thousand one hundred and forty-two dollars in securities is held for the protection generally of policy holders in life insurance companies of this State. For the protection of registered policy holders, exclusively, there are on hand securities to the amount of nine hundred and thirty-seven thousand dollars.

BANKS.

During the last fiscal year there have been returned, destroyed and cancelled, by the Bank Department, $315,316 of the circulating notes of the banks of this State; of which amount $46,364 were the notes of incorporated banks, and $268,952 were the notes of banks organized under the general banking law. The amount of State bank circulation outstanding on the 30th of September last was $2,639,059, of which $1,396,903 were notes of banking associations and individual bankers, organized under the general banking law, and $1,242,156 were notes of incorporated banks. The whole of the former and $372,072 of the latter are secured by bonds and mortgages, Government or State stocks, and cash deposited with the Superintendent of the Bank Department, leaving but $870,084 of unsecured circulation outstanding, a large portion of which, it is presumed, has been destroyed, and the remainder is always redeemed on presentation by the representatives of the banks which issued the same.

The total amount of securities held by the Superintendent of the Bank Department at the close of the fiscal year was $3,058,156.94, of which $2,138,517.23, were held for banking associations and individual bankers, $394,260.73 for incorporated banks, and $525,378.98 for incorporated trust companies. A detailed statement of these securities will be found in the annual report of the Superintendent of the Bank Department.

Fifty-seven banks are now doing business under the laws of this State, but, of course, issue no circulating notes. Of these six have returned to the State system from the national, under the provision of the enabling act of 1867. Several other national banks are reported as having in contemplation a similar change of organization.

One hundred and twenty-eight savings banks are now organized and doing business in this State, with an aggregate of assets exceeding $180,000,000. The magnitude and the importance of this interest seem to demand a more intimate guardianship and more careful supervision than is now afforded. An amendment to existing laws requiring or at least authorizing a personal examination of these institutions, under the direction of the Superintendent of the Bank Department, would, in my judgment, worthily supplement what has already been done in the direction of securing safety and efficiency in their management, and in full disclosure of their real condition for the information and greater security of their depositors. The subject is respectfully submitted to your favorable consideration.

MILITARY AFFAIRS.

The uniformed militia, designated by law "The National Guard of the State of New York," numbers 25,085 officers, non-commissioned officers and privates, and consists of

Three Regiments of Cavalry,
One Battalion of Cavalry,

Four Troops of Cavalry,
Three Battalions of Artillery,
Eight Batteries of Artillery,
Forty-seven Regiments of Infantry,
Three Battalions of Infantry.

The Legislature of 1869 authorized a reduction of the maximum force to 20,000. Three regiments have already been mustered out, and further disbandments are now in progress.

The report of the Adjutant General, which will be transmitted to you at an early day, contains many valuable suggestions, to which I ask your favorable attention. He recommends, among other things, a transfer to county authorities of arsenals not necessary for State purposes; the substitution of breech loaders of the kind adopted by the War Department, in place of arms now in use, and a codification of military laws containing important amendments.[9]

The State Military agencies have, during the year, collected from the United States for back pay, bounties and pensions, and paid over to the several claimants, ($14,829.22) fourteen thousand, eight hundred and twenty-nine dollars and twenty-two cents.

Fifty thousand dollars was appropriated by the Legislature last year to redeem certain certificates issued to the soldiers of the war of 1812. Twenty-six hundred and thirty-one of these certificates, exhausting the whole appropriation, have been examined and audited. There are, I have reason to believe, many families of these old soldiers, whose claims are yet unprovided for. They deserve your favorable attention.[10]

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[9] A new military code was enacted at this session, chapter 80, on the 17th of March. It included a general revision of laws relating to military affairs. Section 214, relative to courts-martial, was sustained in People ex rel. Underwood v. Daniell (1872), 50 N. Y. 274.

[10] Chapter 524, approved April 29, made an additional appropriation of $100,000 for the payment of certificates issued to the militia for service in the war of 1812.

The first division of the National Guard, in the city of New York, which numbers ten thousand men, feels seriously the want of a proper parade ground. It has been suggested that the Central Park Commissioners might be authorized to take lands in the vicinity of the park for the purpose; and it is believed by many that the additional taxable value conferred on adjoining property will compensate for the cost. I recommend this matter to your consideration.

CHARITIES AND ASYLUMS.

I refer you to the official report of the Commissioners of Charities, which will be duly transmitted to you, for information in detail of the operation of our several State charities. I recommend to your favorable consideration the claims of the unfortunate classes to whose relief the State asylums and other institutions are devoted.

I earnestly call your attention to the necessity of additional legislation for the benefit of the insane poor throughout the State. Their condition in the county poor-houses is deplorable. None are so helpless; none, for the most part, so friendless. They are often abandoned by their relatives, who, whatever their inclination, have not the means of giving them the care they need. No provision suitable to their condition and their wants can be made on a small scale. They require, generally, the discipline and the treatment which can be had only in large, well organized institutions, under the charge of men who have made this painful form of disease a special study. It is impracticable for each county to provide properly for the few sufferers of this class who are found within its limits. Their presence in the county poor houses is, from the inadequate care that can there be bestowed upon them, and from the cruel restraint which is often of necessity resorted to, demoralizing to the neighborhood. Interest, duty and charity demand that further provision be made at once for this unfortunate class. The State should provide asylums, with room for the poor thus afflicted who cannot be taken care of otherwise, and the authorities of each county should be required to send to them its insane poor, and to pay such sum for their support while in the State institutions as may be proper. The Willard Asylum, now in process of construction and in partial operation, will have accommodations for two hundred and fifty of this class, and the Hudson River Asylum, and the one to be erected in the Eighth Judicial District, will also, when completed accommodate a limited number; but it is estimated that there are now more than fifteen hundred of insane poor in the State outside of the counties of New York and Kings.

It is probable, that many of those who are classed among the insane poor are so harmless or so manageable, that families and friends could take care of them if pecuniary aid were contributed toward their support. In such cases, the superintendents of the poor should be authorized and required to pay to those who would assume their care such weekly or monthly stipend as should be necessary and proper. This would prevent the overcrowding of the State institutions, yet add nothing to the county charges.[11]

In connection with the subject of insanity, I respectfully suggest that you will give favorable consideration to the application which will be made on behalf of the State asylum at Utica, for authority to appoint a special pathologist for the duty of making such investigations as seem to be now demanded by medical science. The reasons for this will be fully stated in the report of the superintendent of that institution, which will be transmitted to the Legislature.[12]

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[11] The Buffalo State Asylum for the Insane was established and organized by chapter 378, passed April 23. A site for the asylum, consisting of two hundred acres, was donated by the city of Buffalo. The action of the commissioners in accepting this site was confirmed by chapter 441, passed April 27.

The Homeopathic Asylum for Insane was established at Middletown by chapter 474, approved April 28.

THE NEW CAPITOL.

The money thus far expended on the new Capitol, according to a statement furnished me by the Comptroller, is one million three hundred and sixty-three thousand five hundred and forty dollars and fifty cents ($1,363,540.50) of which sum about one-half has been paid for land.

The appropriation made last year was expended before the autumn of 1869. It seemed to be clearly the interest of the State that the work should not be interrupted so long as the condition of the weather permitted its continuance. An arrangement was made, therefore, with the consent of the Executive and the Comptroller, by which three hundred thousand dollars were advanced to the commissioners, and deposited with the Comptroller, to be drawn out on proper vouchers. I recommend that provision be made for the repayment of this advance, and for carrying on this work during the coming year.[13]

QUARANTINE.

The hospital on West Bank, in the lower bay of New York, has been finished. The structure to be used as a boarding station is near completion.

The report of the commissioners will furnish more detailed information, and also the statistics in reference to diseases which are subjected to quarantine.

The commissioners deem some further appropriation of money necessary, in order to enable them still further to strengthen the works under their charge. I recommend their suggestions to favorable and careful consideration.[14]

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[12] A special pathologist for the State Asylum at Utica was authorized by chapter 295, passed April 20.

[13] The supply bill, chapter 492, appropriated $1,300,000 for the new Capitol, $300,000 being for advances made by commissioners during the preceding year. The act prohibited expenditures thereafter unless an appropriation had been made therefor.

IMMIGRATION.

During the past year the number of immigrants landed at the port of New York, was 260,000; showing an increase, as compared with the year 1868, of 46,314.

For more detailed information, I respectfully refer you to the report of the Commissioners of Emigration, which will be transmitted to you at an early day.[15]

GENERAL AND SPECIAL LAWS.

At its last session I was obliged to dissent frequently from the Legislature in reference to bills limited in their application to localities or affording relief in special cases, when, as it appeared to me, the proper course would have been to amend the general laws pertaining to the subject or to pass new general laws. The Legislature, on the reconsideration which the Constitution in such cases imposes upon it,[d] in every instance concurred in and sustained my views. Nevertheless, the Statute book of 1869 contains 920 acts, and is almost as bulky a volume as that of any previous year. This multiplying of laws is a serious evil, and, in my judgment, unnecessary.

I recommend to you the careful examination of all existing general laws, with a view to ascertain what amendments are necessary in order to lessen the number of applications made at every session for special legislation.[16]

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[14] The supply bill, chapter 492, made appropriations for quarantine purposes, including maintenance, completion of buildings, improvements, payment on contracts, etc.

[15] The board of emigration commission was reorganized by chapter 384, passed April 26, by which the Legislature appointed nine regular commissioners for terms of five years whose successors were to be appointed by the Governor and Senate. The act also designated the mayors of New York and Brooklyn, and the Presidents of the German Society of the city of New York and the Irish Emigrant Society as *ex officio* commissioners.

[d] Const. 1846, art. 4, § 9.

An important amendment to the general laws was passed at the last session enlarging the powers of the boards of supervisors over roads and bridges and other matters, in relation to which the Legislature has heretofore been called upon to pass many special acts. I submit, for your consideration, whether the legislative powers of the boards of supervisors over these and other subjects of strictly local interest may not, advantageously, be still further enlarged.

The rapidly increasing population of Westchester county and parts of Long Island, in the immediate vicinity of New York and Brooklyn, renders necessary the laying out of roads and avenues of a character which could not well be provided for in the general laws applicable to other portions of the State. Hence, there are frequent demands upon the Legislature to create special commissions to take charge of such work. I recommend that a law be passed covering all such cases in these localities, which will render future applications to the Legislature unnecessary.

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[16] A new revision commission was created by chapter 33, passed March 2, to be composed of three commissioners to be appointed by the Governor and Senate, whose duty it should be "to revise, simplify, arrange and consolidate all statutes of the State, general and permanent in their nature." The statute contained details as to the method of performing the service, preparing revisions for publication, and presenting reports to the Legislature. The work was to be completed in three years, but the time was afterwards extended.

The act was amended in 1873, chapter 467, by authorizing the commission to include in the scheme of revision the political and penal codes, and the Codes of Civil and Criminal Procedure.

Another amendment in 1875, chapter 520, authorized the commission to include the Civil Code previously reported by the Code Commission, or any part of such code, in the new revision.

In 1876, the Legislature enacted a part of the Code of Civil Procedure presented by the commission. The remainder of the code was enacted in 1880, and the Penal and Criminal Codes in 1881. In 1889 by chapter 289, a new statutory revision commission was created which continued in existence until the last day of December, 1900. This commission reported several general laws which were enacted, and prepared several other revision bills which had not been enacted when the commission went out of office. In 1904, by chapter 664, the Legislature provided for continuing the work of revision by means of a Board of Statutory Consolidation, composed of five persons named in the act.

I recommend the enactment of a general law providing for the appraisal and payment of claims or damages arising or resulting from matters connected with the canals.[17]

I recommend also, the examination of the general law passed at the last session concerning savings banks, to the end that, if necessary, it may be amended so that special charters for these institutions shall not hereafter be requisite; and that no special bills for savings banks be passed at this session, unless the parties applying shall have complied with the general law of last session.

Also, that the general law for the organization of fire companies in towns be amended; it makes no provision for hook and ladder and hose companies;

Also, for your consideration, that the limit now imposed upon the amount of property permitted to be held by literary, musical and other societies be enlarged;

Also, some provision, by general law, under which churches and societies may alter their names, without coming to the Legislature for authority to do so in every special instance.[18]

I also recommend the careful examination of the general laws for the incorporation of villages, to the end that a form of charter may be provided under which the needs of every municipality of that grade may be met, and that applications for special village charters, and for amendments to charters, may no longer be necessary. I also recommend that all existing village charters be, by the provisions of the act suggested, made to conform to the general model of the proposed perfected law. The charter of the village of Owego is to be found complete only by reference to fourteen separate acts of the Legislature passed at as many separate sessions. A fifteenth amended charter was proposed last session, but failed to obtain the executive approval. There seems to me to be no reason why village charters should not be, like our town governments, uniform in character.[19]

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[17] By chapter 321, passed April 21, 1870, the Canal Appraisers were vested with power to hear and determine all canal claims and make awards thereon, but subject to the limitation that "no award shall be made unless the facts proved shall make out a case which would create a legal liability against the State were the same established in evidence in a court of justice against an individual or corporation."

[18] Chapter 322, passed April 21, authorized the General Term of the Supreme Court on application to change the name of any corporation, incorporated company, society or association organized under the laws of the State, except banks, banking associations, trust companies, life, health, accident, marine and fire insurance companies, railroad companies and corporations created by special charter. This subject was afterward included in the Code of Civil Procedure.

I recommend that all laws which have been passed, conflicting with the principle of uniformity in town governments, such as those which, in special instances, permit the votes for town officers to be taken by election districts, instead of in town meeting, be repealed.

There is a defect in the law providing for two justices of the peace to sit as justices of the sessions and of the court of Oyer and Terminer. Section 40 of chap. 280 of the Laws of 1847, provides that in case of absence of any justice of the sessions from any sitting of the court, or in case the office of any of the two justices of the peace who have been chosen justices of the sessions shall be vacant, the county judge may designate some other justice of the peace to act. Section 35 of chapter 470 of the Laws of 1847, so amends the first named section as to leave no provision for appointment in the case of a vacancy. In a recent instance, by reason of this omission, the court of sessions could not be organized. I recommend the immediate passage of an act to remedy the defect.[20]

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[19] A general law for the incorporation of villages, chapter 291, was passed on the 20th of April. It was intended to provide a complete scheme of village organization and government, and included a provision by which villages incorporated by special act could become subject to the general law. The act did not repeal the general village law of 1847. The new law continued in force with various amendatory and supplemental statutes until the enactment of chapter 414, of the laws of 1897, which revised the whole subject and repealed former laws. A constitutional amendment adopted in 1874, article 3, section 18, prohibited the incorporation of villages by special act.

Parts of the village law of 1870, chapter 291, were sustained as follows: Title 3, sec. 3, (peddler's license) in Ballston Spa v. Markham (1890), 58 Hun 238; title 3, sec. 4, (sidewalks) in Richter v. New York (1898), 24 Misc. 613; title 7, sec. 5, (street improvements) in Allen v. Northville (1886), 39 Hun 240.

Title 7, sec. 2, as amended by L. 1893, chap. 694, (damages on opening streets) was held unconstitutional in People ex rel. Eckerson v. Haverstraw (1896), 151 N. Y. 75.

I deem it unnecessary to present arguments in support of these several recommendations, believing that the mere statement of the propositions will secure for them the approval of the Legislature.

CONSPIRACY LAWS.

A statute of this State declares it to be a misdemeanor for "two or more persons to conspire to commit any act injurious to trade or commerce." Such a conspiracy, if it assumes a magnitude which seriously threatens or affects the public welfare, deserves and should receive its proper punishment. This statute, however, has for the most part, since its adoption, more than forty years ago, been of little practical value. I cannot find, after a careful examination, that its provisions have ever been successfully invoked against capitalists or others for combining to raise the prices of grain, coal and other articles necessary for the comfort of the whole people, or to reduce the rate of wages. It has however been evoked on several occasions against and been by the courts construed to apply to journeymen and others for combining to raise the rate of wages, or to make and enforce regulations which they deemed necessary for their mutual welfare. Cases have recently occurred in Westchester county where the law has been enforced against persons engaged in the last named combinations. I do not believe that the existence of a statute which can be so construed as to make such acts criminal is productive of any public benefit. I do believe it to be productive rather of public evil. Like all other laws which from their nature are likely to be executed unequally, it operates, when it operates at all, oppressively.

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[20] The recommendation as to justices of sessions was embodied in chapter 3, passed January 25, 1870, which among other things authorized the presiding judge of the court to appoint a justice of the peace to fill a vacancy in the office of justice of sessions.

I recommend, therefore, a repeal of this conspiracy law, or such a modification of it as, while it forbids a conspiracy to injure the general trade and commerce of the State or country, will do away with that judicial construction which makes it equally criminal for citizens to combine for the purpose of securing an increase of the wages of labor, or of establishing and maintaining prudential regulations for their mutual interest and protection.[21]

INJUNCTIONS AND RECEIVERS.

I recommend also the passage of a law forbidding the granting of injunctions or the appointing of receivers in cases affecting moneyed and other corporations on *ex parte* applications. I think it would be far better even that the writ of injunction should be abolished altogether than that it should continue to be the cause of the unseemly collisions between judges, which have been frequent for some years past.[22]

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[21] The Governor's suggestion as to conspiracies was answered by the enactment of chapter 19, on the 17th of February, declaring that the provisions of subdivision six of section 8, chapter one, part four of the Revised Statutes, (conspiracies) "shall not be construed in any court of this State to restrict or prohibit the orderly and peaceable assembling and co-operation of persons employed in any profession, trade or handicraft for the purpose of securing an advance in the rate of wages or compensation or for the maintenance of such rate."

This subject is now included in section 170 of the Penal Code.

APPRENTICE LAWS.

I am informed that application will be made to the Legislature for a revision of the laws relating to apprentices. One of the complaints against the existing statutes is that, while they impose severe penalties upon apprentices for violation of the provisions of their indentures, they do not afford sufficient protection to the apprentices themselves. It is claimed, and with justice, that the employer should not only be bound to thoroughly instruct his apprentice in all the mysteries of his business and calling, but that proper penalties should be imposed upon him for violation of this duty. The State should make due provision for the enforcement of all contracts affecting persons under age; and it is the interest of the community to secure the greatest amount of skilled labor in all mechanical occupations. I recommend the whole subject of revising the apprentice laws to your prompt and careful consideration.

REVISION OF STATUTES.

I again invite your attention to the importance of a revision of the statutes of this State. During the first forty-eight years of our history, the Legislature provided for four different revisions. The last act for that purpose was passed on the 21st of April, 1825, and the last revision was completed in 1828. Since that time a new Constitution has been put in force; the State courts have been reorganized; a new system of practice has been adopted, and many acts have been passed, materially affecting the provisions of existing laws. These changes, so numerous and important, and extending, as they now do, through at least fifty volumes, create great difficulty, and sometimes uncertainty, in ascertaining the exact state of the law.

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[22] The practice of granting injunctions against corporations or their officers was regulated by chapter 151, passed April 7, which prohibited the granting of an injunction in certain specified cases except by the court on notice.

A new revision, by which all laws of a general nature shall be collected together and the various acts relating to the same subject arranged and consolidated, is greatly needed. [See note 16.]

NEW JUDICIARY.

The amended Constitution proposed by the Convention which closed its sessions February 28, 1868, was submitted to the electors at the last general election, pursuant to chapter 318 of the Laws of 1869, and that portion known as the Judiciary Article was adopted.

It will be the duty of the Legislature to pass the necessary laws to carry into full working operation this article, which becomes the sixth article of the Constitution of the State, and I recommend that it be done as early in the session as may be practicable.[23]

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[23] The Court of Appeals was included in chapter 203, passed April 14, which continued the business of the former court, and regulated the transfer of business to the new court, which was required to meet in Albany on the first Tuesday in July, 1870. The same act required the Commission of Appeals provided for by the Constitution to meet and organize on the first Monday of July, 1870, and the clerk of the existing Court of Appeals, was to be clerk of the commission. Chapter 86, passed March 22, provided for the election of a chief judge and six associate judges of the new Court of Appeals on the 3d Tuesday of May, 1870. The same act provided for the election of three additional judges of the New York Court of Common Pleas.

Chapter 408, passed April 27, provided for the reorganization of the General Terms of the Supreme Court, dividing the state into four judicial departments, with details as to procedure and the powers of the court, and the Governor was authorized to designate a judge of the New York Common Pleas to hold Circuit and Special Terms of the Supreme Court.

Chapter 467, approved April 28, related to the jurisdiction and powers of the County Courts under the new Constitution, and authorized the boards of supervisors to establish the salaries of county judges and surrogates. Section 3, relating to county judge's salary, was held unconstitutional in Healey v. Dudley (1871), 5 Lans. 115.

REGISTRY AND ELECTION LAWS.

I respectfully call the attention of the Legislature to the want of uniformity in the registry and election laws of the State. All laws relating to elections should be uniform in their principles, and general in their application.

The open and corrupt use of money at the polls and elsewhere to control elections is a great evil and demands your earnest attention. The laws which aim to secure the people in their right of speaking through the ballot-box should be stringent and rigorously enforced. They should not embarrass the electors, yet they should guard, with the greatest care, against frauds at the polls or in the canvass. The Legislature should spare no efforts in this direction. It is to be feared, however, that no laws, though carefully and skillfully devised, can protect the purity of the ballot-box, unless your legislation can reach what is the fundamental evil; the corrupt use of money in elections.

In considering this subject, it must not be overlooked that grave doubts are expressed by very intelligent men, whether our present registry laws, while they oftentimes embarrass honest voters, are, in any material degree, effective for the prevention of frauds; and there are many who believe, after a fair and full trial of them, that far better results would be attained by providing everywhere for the establishment of smaller polling districts and the full and free exercise of the privilege of challenge on the day of election. The subject is of the greatest importance, and demands your earnest consideration; for the whole system of our government depends upon maintaining and preserving the purity of elections.[24]

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[24] All registry laws were repealed by chapter 503, approved April 28, except as to the city and county of New York.

Chapter 138, passed April 5, enacted numerous and detailed provisions concerning elections in New York.

CRIMINAL LAW.

There are frequent cases of murder, as the crime is now defined, in which the jury are unwilling to convict, because of so little deliberation in the act, that they think it does not deserve the punishment of death. They acquit or find a verdict of manslaughter in some inferior degree; or they convict of murder with a recommendation to mercy, and so throw upon the Executive the responsibility of deciding whether the death penalty shall be enforced. A simple change in the statute would, in my judgment, secure a far better administration of criminal laws and a more certain punishment of crime than is now attained. I earnestly renew the recommendation made last year, that express provision be made by statute, that in all cases of murder, where the degree of premeditation or the circumstances attending the homicide do not, in the opinion of the jury, justify punishment by death, they may render a verdict of murder in a less degree, to be punished by imprisonment for life or for a term of years, in the discretion of the court.

By existing provisions of law, courts of sessions have the power, in cases of conviction by them, to grant new trials upon the merits, or for irregularity, or on the ground of newly discovered evidence. I recommend that the same power be conferred upon the Oyer and Terminer or upon the Supreme Court in cases of conviction by the Oyer and Terminer.

I also suggest, for your consideration, whether it would not be well to abolish, as has been done in England and in some of the States, the common law rule which forbids the trial of an accessory to a felony until after the conviction of the principal offender. It often operates to screen guilty men from punishment, and so to defeat the ends of justice.

EXCISE LAWS.

In my last annual message I recommended the repeal of the Metropolitan District Excise Law for the reasons, among others, that it was local and not general, that its provisions were unnecessarily harsh, needlessly violated private rights, and unduly interfered with the social customs of large numbers of sober, temperate, law-abiding citizens, whose enjoyment of such customs did not prejudice general morals or public order. This law also authorizes arrest without warrant, and under its operation a system of espionage has grown up as degrading to the police who are compelled to carry it out, as it is to the people who suffer from it. For these reasons I again recommend its repeal.

Excise laws should be uniform in principle, and general in their application throughout the State, regulating the sale of intoxicating liquors under due restrictions as to time and place, aiming to secure order and decorum on every day of the week, fully recognizing the general sentiment prevailing in favor of a proper observance of Sunday (as has always been done in the statutes of the State from the earliest period of its history), yet free from the intolerant provisions which characterize the present Metropolitan District Law, and which are wholly unnecessary to the attainment of these ends.

Boards of excise should consist of, or be appointed by some local authority. I recommend the abolition of the county boards as now organized throughout the State, and the substitution of local boards, to be composed of the supervisors and justices of the peace of the several towns. This was the old system under the Revised Statutes, and it has not, in my judgment, been improved upon by the subsequent legislation. In villages, the board might properly consist of the president and board of trustees, and in cities be appointed by the mayor.[25]

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[25] The Metropolitan Excise district was abolished by chapter 175, passed April 11, which contained general provisions relating to excise applicable to the whole State. It provided for a board of commissioners of excise in each city, village and town. The act regulated licenses and the sale of intoxicating liquors. County boards of excise were abolished.

COMMISSIONS AND CITY GOVERNMENTS.

The Constitution of 1846, recognized, for the purposes of local governments, counties, cities, towns and villages, and no other territorial divisions, and provided that the officers thereof should be elected by the electors of such counties, cities, towns and villages, or of some division thereof, or appointed by such authorities thereof as the Legislature should designate.[e] This provision was intended to secure the right of self-government in local affairs against any possible encroachment or violation. For the purpose of evading it, the Legislature created new districts (so-called), made up of two or more adjoining counties, and established within their limits various independent boards and commissions, in which all powers relating to police, fire, excise and health, or some of these subjects, are vested, and the members of which commissions are not elected by the people of the localities or appointed by the authorities thereof. The constitutionality of this legislation was affirmed by the Court of Appeals;[*] although it is hardly denied that it is an evasion of the spirit of the Constitution. The effect was, in every instance, practically, to give to the political minority in the districts the power, through the central authority at the Capitol, of governing the majority.

It cannot be denied that there were evils in municipal governments existing at the time, which were seized upon as a pretext for this extraordinary legislation. The intelligent sentiment of the community to-day declares that such legislation was unwise, and that the true remedy for the evils complained of was not in laws of the character mentioned, but in a thorough reorganization of municipal governments upon sound principles. I have always been opposed to the laws referred to, and have recommended, and do now recommend, their repeal, and a thorough revision of the charters of the cities embraced in any of these districts, in order to insure an early return to the system of local self-government as guaranteed by the Constitution. Existing charters are radically defective, inasmuch as there is an almost entire absence of executive power in the mayor; and, as I said in my last annual message, no good government can be secured to any great city unless it shall have a responsible head, in whom shall be vested all executive power, and to whom, as the elected representative of the people, all departments charged with administrative duties shall be directly and summarily responsible and accountable. I believe this to be the very foundation stone of a good structure of municipal government.

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[e] Const. 1846, art. 10, § 2.

[*] See People ex rel. Wood v. Draper, 15 N. Y. 532.

This subject is one in which the people of the whole State feel a deep interest, and in regard to which they will expect prompt and judicious legislative action.[26]

EARLY LEGISLATION.

It is the practice to submit the annual tax levies of the city and county of New York to the Legislature for approval. For many years past, the consideration of these and of the several appropriation bills for the State government has been delayed until a late period of the session. The Executive is, by this delay, practically deprived of the opportunity to present objections, if any he has, to the provisions of these important bills, to the end that, if his objections, upon reconsideration by the Legislature, be deemed valid, the bills may be amended. Not only these but many other bills of great importance were, last year, presented to me at the very end of the session, so that no alternative was left to me but to approve, notwithstanding some objectionable details, or disapprove the bills and let them fail to become laws at great public inconvenience. For these reasons, I recommend that the city and county tax levies, as well as all bills appropriating moneys for the support of the State government, be taken up early in the session; and also that the consideration of other bills of great general importance be postponed no longer than the state of public business makes necessary.

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[26] Chapter 137, passed April 5, section 90, created a health department in the city of New York, to be under the supervision of a board composed of the police commissioners of the city of New York, the health officer of the port and four officers to be called "Commissioners of Health of the City of New York."

Chapter 381, passed April 26, repealed the Metropolitan Sanitary District act of 1866, chapter 74, so far as it applied to Brooklyn, and revived the provisions of the act of 1854 relative to public health in that city.

Chapter 137 was sustained in Re Zborowski (1877), 68 N. Y. 88; Long v. New York (1880), 81 N. Y. 425.

I have now, as far as it seems to me necessary, presented to you facts and suggestions connected with the condition of our own State.

Our especial duty is to promote the public good, by laboring to secure a more prudent, honest and economical home government.

Recognizing the goodness of God, grateful to Him for all His mercies, acknowledging our dependence upon Him, looking to Him for wisdom and guidance, trusting Him to lead us, through all the dangers which beset us, let us all, in our respective spheres, labor to secure to the State and to the country substantial prosperity and real and enduring peace.

FEDERAL AFFAIRS.

The people of this State are deeply concerned in a wise administration of Federal affairs. As representing them, I believe it to be my duty, before closing this message, to call attention to, and to protest against, whatever, in the policy of the general government, strikes at their commercial and agricultural interests, or is, in any way, prejudicial to their welfare.

I protest against the revolutionary course of Congress with reference to amendments of the Constitution of the United States; by which, among their other efforts at centralization, they seek the absolute control of elections in the States. Powerless themselves to amend it by direct act, and unable to procure the voluntary consent of three-fourths of the States, they force the consent of the Southern States as a condition to representation, and thus override and nullify the will of others, whose proper relations to the Federal Government have never been interrupted, and whom they cannot constrain.

I protest against the action of both Congress and the President of the United States in subjecting the people of Georgia anew to military power, their State government being in full operation, and the restoration of their constitutional relations with the Federal Government having been recognized by the Federal authorities as complete.

I protest against the longer exclusion, from representation, of any of the States; if any one be excluded, the rights of all are unsettled, and the harmony of our government is destroyed.

TARIFF.

I protest against the favoritism of our present tariff laws, which have, virtually, destroyed American shipping and which bear oppressively upon the masses of the people and especially upon the great agricultural States, between whom and our own State the relations are close and intimate, and upon whose prosperity and freedom from unjust exactions depend largely the welfare of the whole country, and its ability to defend its honor and pay its debts. I protest against postponing, as has been suggested by the President of the United States, the revision of these laws. The evils connected with them are already of long continuance, and immediate relief is required.

Our taxation for the accumulated responsibilities and present cost of the Federal government is heavy; its weight will be felt the more severely now that low prices for our agricultural and other products are likely to prevail. The people submit cheerfully to all taxes necessary for the support of the government and of its credit. They have a right to demand, however, that the burden of a very heavy taxation shall be fairly and equally adjusted, and so adjusted as to interfere as little as possible with their daily comfort. It is the direct interest of the people at large that they shall be able to buy cheaply whatever they have to buy. Our present tariff of duties on imports compels the many to pay high prices for the benefit of a few. Although enacted during the great need of the government, it was, nevertheless, framed, not for the one great end of giving the Federal treasury the largest income, but with the view of favoring certain special private interests. No government has a right to tax, except to obtain its necessary revenue. To impose taxes upon articles of daily need for the mere purpose, by increasing their price, of favoring the capitalists engaged in their manufacture or production is an abuse of the taxing power. So long as laws are enacted upon this principle, powerful combinations will be formed among those whose special interests are to be beneficially affected by them, to push through schemes which favor their private business, regardless of the interests alike of the people and of the Federal treasury.

Laws of this nature tend to the building up of moneyed monopolies, to the aggregation of capital in few hands, and to the creation and strengthening of an illegitimate influence to which Congress becomes more and more subject. In enforcing duties intended to be prohibitory, an extraordinary and very costly body of officials is made necessary, the temptation to smuggling and fraud is increased, and official delinquency is made common; evils which would be avoided while the revenue would not be decreased, by a return to the simple duty of government, and to moderate imposts.

To make a just tariff of duties the principles of favoritism should be abandoned altogether. If the principle be admitted, no limit can be placed on the abuses under it.

GENERAL FINANCES.

I protest against the continuance of a financial policy which fails either to strengthen the public credit, or to diminish the people's burdens; which keeps values uncertain and unsettled; which baffles business foresight; which, while permitting the sale of government gold, leaves the country subject to all the evils of an irredeemable paper currency; which threatens to withdraw from the people what is now in use as money before providing a substitute; which, undefined in character and variable in action, exposes the business of the country constantly to the chances of disastrous panics; which seeks to exert a fluctuating control over the gold market, instead of making steady progress towards permanent soundness in financial condition; which can suggest no method of meeting the legal tender promises, except to get them back from the people by a process of contraction both painful and dangerous; which neglects to redeem the legal tender notes held everywhere among the people, yet, with the proceeds of excessive taxation, purchases, at a premium, bonds that the government is under no obligation to pay for nearly fifteen years; which saves a few millions annually in interest on the bonds thus purchased, when, by raising the credit of the country to its proper level, many millions more could be saved by the negotiation of a new loan at a lower rate of interest; which assumes that the rate of interest on our bonds can be lowered at the sole will of the borrower, or that capitalists who now hold bonds paying six per cent interest in gold, can be persuaded to exchange them voluntarily for bonds bearing only four and a half per cent; which, failing to devise a permanent financial system to which the business of the country could, without undue sacrifices, conform, substitutes a series of experiments that entail losses upon individuals, without contributing to the general good; which suggests no remedy for the fluctuating value of the legal tender notes, except that the government shall redeem these promises at a price fixed by itself, which is to be less than their face, or, in other words, repudiate so much of its obligations; and which, by failing to secure the confidence of the capitalists of the world, keeps the government securities below par in gold everywhere, when in view of the vast resources of the country they should, even at five per cent. interest, command a premium.

We are enduring great evils from our irredeemable currency. The financial panic, which occurred in New York in September last, threatened, for a time, widespread disaster. A very little increase of the then prevailing distrust might have thrown the whole business of the country into confusion. That panic would not have been possible but for our having in use as money something which, lacking the intrinsic worth of the precious metals, must depend, for its current estimated value, upon the caprices of opinion.

Money of shifting value is a curse to the great body of the people. It renders the rate of wages delusive, counteracts and defeats the economy of the household, and makes the savings of labor, laid up at the cost of much self-denial, of uncertain and variable value. If we would avoid discouraging regular industry, and fostering, in its stead, a spirit of speculation, the money which we use to denote the value of what we have to buy and sell every day, and in which we fix the rate of wages, must be constant in its own value, and not liable to capricious fluctuations.

It is a misfortune that we ever departed from the use of the money of the Constitution.[f] Sooner or later we shall be obliged to go back to it. We have before us the alternatives of returning to a sound condition by wise and prudent efforts of our own, or of awaiting the possible advent of a financial panic of greater intensity than any we have yet witnessed, and a return to specie payments, at the cost of great and protracted suffering, by the operation of self-enforcing laws which are above our control.

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[f] U. S. Const. art. 1, § 8, clause 5.

I do not believe that any contraction of the legal tender currency is necessary in order to reach specie payments. The amount of such paper is limited, and it is not seriously depreciated. We have not, as some others have done, issued paper money without limit and to an unmanageable extent, making the depreciation of it so great as to render it almost worthless and its restoration to par hopeless. The whole sum of the legal tender notes, scarcely exceeds the amount of coin received in two years at our custom houses. The amount of legal tender notes afloat on the 1st of December last, was, including fractional currency, $395,000,000. The present annual gold income of the treasury, from import duties, is $180,000,000. With the abundant resources of the Federal treasury it ought to be, and it is possible, to leave this currency at its present quantity, and yet put it, at no very distant period, at par; and thus to give settled prosperity to the people and save them the distress which will attend contraction.

After the peace of 1815, England returned specie payments by contracting the volume of her paper money. She had no other means of reaching the result. She was not, as we are, a gold producing country; and was obliged, therefore, to curtail her paper currency so as to force gold to flow in to her from abroad. In consequence of this policy, the trade and business of her people were crippled, general distress ensued and immense numbers of those who lived by wages were deprived of their proper employment and condemned to idleness and want. The ten years from 1815 to 1825 was a period of fearful suffering in England and of repeated and most disastrous financial convulsions. We should take warning from her experience. We have no occasion to force gold into this country from abroad. We produce it largely at home, and all we need to do is to retain enough of our own product to effect our purpose.

The government is as much bound to pay its legal tender notes as its bonds. I am for paying both in full, and against the repudiation of any portion of either.

The legal tender notes are promises of the government to pay money, that is, gold coin, on demand. They are in the pockets of the laborer and the farmer, in the tills of tradesmen, in the vaults of the banks as a part of and as security for the deposits of the people, which deposits constitute available capital essential to daily business.

The Federal treasury, in the hour of its need, forced this irredeemable paper on the people; it is a matter of simple duty, now, in the time of its abundant resources, to redeem it. This paper displaced the coin which was before in use. The business of the country has adapted itself to the existing quantity of our present lawful money, and the people rely upon this legal tender paper wherewith to pay all ordinary debts; it is the substance, too, in which bank notes are redeemed, and in which all that vast aggregate of indebtedness, known as bank deposits, is payable. On this paper, therefore, the whole structure of our internal business now rests; and upon its soundness is dependent the substantial prosperity of the people. It is bad faith to the people to lessen its quantity, or to take from it its legal tender quality, until it is paid.

When coin occupied the same place in our money system which is now held by the legal tender notes, any serious withdrawal, from whatever cause, of the gold then in use from the general circulation, invariably produced financial trouble. The withdrawal of legal tender notes now must be followed by like trouble. The theory of those who advocate contraction, is that so soon as the legal tender notes shall have been reduced to $250,000,000, or some other theoretical sum, the government will be able to make this reduced quantity redeemable in coin, and so put the notes at par with gold. If it will be possible to put the lesser quantity at par by making it redeemable, it is obvious that, with a little more effort, the present quantity can be made redeemable and put at par; and this effort is due from the government to the people.

The Federal government is bound to restore coin to the place which it formerly occupied in the business of the country, and from which the treasury, for its own convenience, displaced it. It should be ready to substitute coin in the general circulation before it undertakes to withdraw legal tender notes; otherwise the withdrawal of the paper amounts to an absolute destruction of so much of our stock of lawful money, and, practically, of so much of the people's capital in the form of ready money. Such withdrawal would lessen everywhere the resources of paying debts, make all debts less secure, diminish confidence and render disastrous panics probable.

Two kinds of money of unequal value will not circulate together. The government, therefore, cannot make coin take the place, in general circulation, of any portion of the notes which may be withdrawn, until the notes are first rendered equivalent to coin. This can only be done by making them redeemable in coin on demand. And it must be borne in mind that this is all that is necessary to be done to restore general specie payments. The banks are not in a state of suspension; they redeem their notes and pay their other debts in the lawful money of the country; if that lawful money were to-day equivalent to coin, they would find themselves and all their customers paying specie without any effort on their part and without any distress. It is the government, and the government only, which has suspended payment; the legal tender notes alone which are irredeemable. When the Federal treasury is ready to redeem its legal tender promises in gold, as fast as the public are likely to present them, specie payments are thereby resumed, all over the country, without further effort on the part of any one and without inconvenience to the people. Then, and not now, will be the proper time for taking in the paper; for such contraction can do no mischief. It will in fact be no contraction. The treasury may then cancel every note so soon as it is paid; for, gold and the notes being at par, the coin paid out of the treasury will enter into the general circulation in place of the notes redeemed; and no diminution of the stock of lawful money in use will be forced on the people.

The essential evil of our present lawful money is to be found not in its quantity, but in the fact that it is not redeemable; it is, for that reason, depreciated. A less quantity would as certainly be depreciated, if that less quantity continued to be irredeemable. Even a single note, issued by the government, or by any other debtor, without provision made for its payment, would become depreciated.

The remedy which wisdom suggests is to make the notes redeemable, without pausing to discuss the question of how much money the people ought to have in use. In looking back, we see that when our money was good in quality, no apprehensions were felt that too much of it would be used. The government passed through its mint all the gold the people chose to have coined. Political economists and statesmen may speculate, as they do, as to how much money is necessary and proper for the business of a country; but this is a question beyond their wisdom. If the government will take care that the money it issues is good, the people will regulate the quantity to be used by their needs.

It is the special duty of the Federal treasury, the issue of whose irredeemable paper has brought us to our present condition, to see to it that there is an ample supply of coin retained in the country so as to make the transition from our present currency to gold both easy and permanent. It seems obvious that this supply of gold should be in the Federal treasury, which is responsible for the only irredeemable paper now afloat, so that the coin may be ready, when the proper time comes, to flow promptly out of the treasury into general circulation in exchange for the notes redeemed.

The first great duty of the government is to make its legal tender promises as good as gold. Having thus established its credit, it will find no difficulty in negotiating loans at lower interest, and in managing its bonded debt. It cannot, any more than a private debtor, hope for high credit, while paying some debts and ignoring others.

It is a delusion to suppose that the payment of a few of our bonds before they are due, materially helps the public credit; the treasury is not bankrupt as to its bonds; it is paying the interest according to contract, and the principal is not yet due; this is not the point where the public credit needs to be helped. The treasury is bankrupt on its legal tender notes; for a failure to pay a promise when it is due is bankruptcy. No debtor improves his credit by anticipating the payment of some of his obligations which are not due while he neglects to pay those which are due. Nor does the payment of the bonds before maturity tend materially to lessen the burdens of the people. Were we to cancel $100,000,000 of bonds in any year there would result an annual saving of interest of $6,000,000. If, on the other hand, we could reduce the rate of interest on our loans by only one per cent, we should, thereby, effect, at once, a saving of over $20,000,000 a year for the whole time the debt may run. Moreover, this payment of the bonds before maturity can be made only out of surplus revenue; that is to say, by keeping up taxation to a point far beyond the actual needs of the government.

We must not forget that financial laws are self-created, out of the circumstances existing at the period; they cannot be constrained by legislation. We shall be most likely to avoid trouble by seeking the natural solution of our present difficulty; which natural solution is, as it seems to me, that the power which issued the irredeemable paper, under which we now suffer, should get ready to redeem it.

Spasmodic sales of gold from the treasury impart no additional worth to the legal tender notes. Confidence in ability to meet obligations is the only source of solid credit as well for the treasury as for other debtors. Increasing public confidence in the growing ability of the treasury to meet the notes in coin would operate not merely to affect, from day to day, as these sales do, the speculative price of gold, but towards the recognition of a greater intrinsic value in the legal tender note, and so to make the possible range of gold speculations narrower.

It is obvious that sales of gold out of the treasury cannot have the effect of bringing legal tender notes actually and permanently nearer to the value of gold; for it would be absurd to maintain that the treasury, any more than any other debtor, can, by parting with coin, make its promises to pay coin more valuable. The treasury sales of gold have simply the effect which is always produced by throwing upon any market a supply of an article for which there is, in that market, a limited demand. All debts, with rare exceptions, being now payable in legal tender notes, the need of gold for use in business is not general, and therefore the demand for it is confined to a few, and is a very limited one. In a market so situated, a very temporary and small oversupply may depress it much below its true and correct value as compared with legal tender notes; which depends, obviously, on the prospect of the notes being paid in coin. Derangement of business is as certain to follow the artificial depression of gold below this true value as its elevation above it. Such a depression cannot be relied upon as lasting; nor does it afford any guaranty against great subsequent fluctuations. These treasury sales, while they do not improve permanently the value of the government paper, confound the most prudent calculations of business men.

I must not be understood as favoring any expansion of the legal tender currency. The government cannot at present pay the notes of this kind already issued. It would be utterly unjustifiable to put out any more of them.

The Federal treasury is not warranted in taxing the people to keep up its present enormous surplus revenues. If the country can be kept in a prosperous condition, every year of its growth will make the payment of the principal of the debt come easier. A moderate surplus beyond the interest on the debt and the expenses of government is all that is desirable or necessary to enable it to devote itself sufficiently to the great, imperative duty of making its paper money good.

The moment the people see that the government is getting ready to redeem its paper by providing itself with the only means of doing it, the appreciation in the actual value of the legal tender notes will commence. It will continue and the progress towards a return of specie payments will be gradual, steady and certain. The very fact that the government is under a fixed and stable, and not an experimental and variable policy, preparing to redeem its paper, and will some day announce its readiness to do so, would narrow the range within which speculation in gold would be possible. The current value of the notes in the open market will indicate when the proper time has come for redemption; the government need not declare it in advance.

The most severe, cruel and ruinous method of contraction would be one that should put the value of these notes by regular gradation at a higher and higher rate from day to day or week to week, as is suggested by the President of the United States;* or any method by which they should be converted or exchanged into interest bearing securities; for this would act rigidly and rapidly to take them out of circulation. Such a form of contraction would, I fear, not only inflict unparalleled distress upon the people, but endanger the credit of the government itself.

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* Ulysses S. Grant.

It is not necessary to discuss the propriety of the original measures, of which our present financial condition is the result. I simply consider the practical questions which present themselves, taking things as they are. It needs no great financial wisdom to see that the way to high credit is for the treasury to prepare itself to pay all its debts, as well its legal tender promises as its bonds; that high credit is the condition precedent to a lower rate of interest on government loans; that lowering the rate of interest on the loans will afford great relief to the people; and that no relief either to treasury or people can be expected from what tends to derangement or stagnation in the business of the country.

The earliest practicable return to the hard money of the Constitution[g] is, therefore, desirable, as being, in every way, for the interest of the people; but this return should be made wisely, by a process which will not cost needless suffering, under a declared and fixed policy, intelligible to the whole country, and which will insure that the change, when it comes, shall be permanent. A rash attempt would, by its failure, make our condition worse than it is now. But no time should be lost in adopting measures which shall lead by prudent steps to the attainment, at no very distant day, of a result to which sooner or later we must come.

If the Federal government does not try to accomplish an early return to the use of gold and silver, without spreading ruin among the people, it fails in its duty; if, with its abundant revenue, it cannot devise a method of doing so, it fails in wisdom.

JOHN T. HOFFMAN.

SPECIAL MESSAGES.

January 5. To the Assembly: Transmitting the annual reports of the Adjutant General, the Metropolitan Board of Health, the Metropolitan Police, the Board of Capital Police, the Niagara Frontier Police and the Cattle Commissioners.

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[g] U. S. Const. art. 1, § 8, clause 5.

January 11. To the Assembly: Transmitting the annual report of the commissioners of quarantine.

January 19. To the Assembly: Transmitting the annual reports of the board of commissioners of the Metropolitan Fire Department, the Metropolitan Board of Excise, the Board of Commissioners of Pilots, the Captain of the Port of New York, and the New York Prison Association.

February 4. To the Legislature: Transmitting the annual report of the Cooper Union for the Advancement of Science and Art.

February 4. To the Assembly: Transmitting the annual report of Brigadier General Morris, Commissary General of Ordnance.

February 12. To the Assembly: Transmitting a report of the pardons, commutations and reprieves granted during the year 1869.

February 24. To the Assembly:

Veto of a bill entitled "An act authorizing the appointment of an assistant district attorney for Washington County."

" The bill authorizes the district attorney of Washington county to appoint an assistant, who shall receive an annual salary, to be fixed by the board of supervisors, not exceeding five hundred dollars.

It seems to me that this is a matter which ought to be left to the county authorities, who are the proper, as they are the best, judges of the necessity, if any, which exists for this additional office.

There is no pressing emergency which calls for this special enactment. Under existing laws, there can be no difficulty in providing for necessary assistance to the district attorney.

By the Revised Statutes (part 1, title 4, section 3) the supervisors are authorized to audit the bills of the district attorney for any expenses necessarily incurred by him in criminal cases. It can hardly be doubted that a proper sum for clerical or other assistance could be thus made a county charge.

For a temporary emergency requiring the services of an additional prosecuting officer the general laws also provide. Under the Revised Statutes (part 1, title 2, article 7, section 90) 'whenever any district attorney shall fail to attend' any court of oyer and terminer or general sessions, the court may appoint a person to discharge his duties during the sitting of the court; and for compensation to the person so appointed due provision is made.

The supervisors of every county have authority, under the general laws (chapter 304 of the Laws of 1852), to fix the salary of the district attorney at such sum as they may think proper, except that the salary as fixed at the time of the election of any district attorney cannot afterward be increased during his term of office. If the necessity for an extra force in the district attorney's office in Washington county was apparent at the beginning of the term of the present incumbent, it is to be presumed the supervisors would have put the salary at a sum sufficient to enable him to pay out of it for the services of an assistant. If the necessity has only become apparent since the present incumbent came into office, it cannot be a very pressing one.

It is not claimed, so far as I can learn, that any great increase of criminal business has occurred within the county in that short period.

If an additional prosecuting officer be necessary in Washington county, it is probable that many other counties have the same need.

It is true there are several laws on the statute books like this one, each law applicable to only one county.

They are comparatively unimportant, perhaps, but they all belong to a class of special laws which, in my judgment, ought to be discouraged and discontinued.

The boards of supervisors are the safest judges of what the public business, in their respective counties, require in this respect. If anything needs to be done by the Legislature to attain the object sought by this bill, it should be done by a general law authorizing every district attorney to appoint an assistant whenever the supervisors of his county deem it proper to sanction the appointment by providing the necessary salary.

The Legislature would thus be relieved from the consideration of special bills of this class."

The bill was not passed over the veto. See chap. 752 as to the compensation of district attorneys.

February 25. To the Assembly: Transmitting a communication from the Board of Commissioners charged with erecting certain buildings on West Bank in New York Bay.

March 8. To the Legislature:

"EXECUTIVE DEPARTMENT,
ALBANY, *March* 8, 1870.

"I have already signed, this session, a bill amending a village charter which was thoroughly revised and made complete, as was then supposed, only three years ago.

There appear to be many bills of this kind now pending. In the last three years, notwithstanding there is a general law to be found in the statute book, one hundred and fifty-two acts have been passed granting or amending village charters. About sixty such special acts were passed at the last session.

I suggested in my message to you at the beginning of the session the propriety, in view of the imperfect character of the existing general law, of enacting a new general law for the incorporation of villages so comprehensive as to do away with the necessity for special charters and for the applications to amend charters now so frequent. It is not unusual for a village to apply for amendments to its charter in the first year of its existence, and sometimes such applications are renewed every year.

I beg to call your attention, respectfully, to a bill providing for the incorporation of villages which has been presented to the Senate by the Senator from the first district, and is now in the hands of the appropriate committee of that body.

It is known to me that during the preparation of this bill the existing law for the incorporation of villages, now so seldom used because so defective, and the numerous charters of villages incorporated by special acts, have been carefully studied, and it is my impression that the bill will be found to provide for all the wants of municipalities of this class. It is for you, however, to determine whether it is sufficient for its purpose, and to make all amendments which, in your judgment, it may require.

I recommend the bill to your prompt consideration, believing that, if it be passed, with such amendments as the wisdom of the Legislature may suggest, you will be relieved from the consideration of all the special bills relative to village charters now pending before you, and that, in future, applications to the Legislature for village charters or for amendments to such charters will be unnecessary. The bill contains a section enabling any existing village, by a vote of its electors, to adopt the provisions of the general act for its government in lieu of its present charter.

If, in the consideration of this whole subject, you give the preference, in order of time, to this general bill over the special village bills now before you, great care will be taken on the part of those who are advocating the special bills that the general bill shall afford the remedies which are sought respectively by the several special bills. In this way the general bill will be made more perfect by having attracted to it a closer and more general attention than is likely to be given to bills applicable each one to a single village.

I trust this communication will not be considered out of place by the Legislature. It is prompted by a desire not only to save the valuable time of the Legislature, but also to promote the public convenience by the passage of some comprehensive general law which will enable the people in any part of the State to organize, when necessary, a village government, without being subjected to the trouble and delay of applying to the Legislature for a special charter. [See note 19.]

JOHN T. HOFFMAN."

March 22. To the Senate:

Veto of a bill entitled "An act for the protection of the bridge over the Oswego River at Phoenix, between the town of Lysander, in the county of Onondaga, and the town of Schroeppel in the county of Oswego."

"The bill provides that it shall not be lawful for 'any person to ride or drive faster than a walk in crossing the bridge,' above named, and that the penalty for riding or driving at a faster pace shall be twenty-five dollars, for each offense, to be sued for in the name of the commissioners of highways, one-third of the penalty to go to the informer.

There is a general law on this subject (Revised Statutes, part 1, chapter 16, title 1, article 6, sections 122 and 123), which provides that the commissioners of highways 'may put up at each end of any bridge maintained at the public charge, and the length of whose chord is not less than twenty-five feet,' a notice 'that there is one dollar fine for riding or driving on this bridge faster than a walk,' and that whoever shall ride or drive upon any such bridge at a faster pace shall forfeit one dollar for each offense.

The fine imposed by this law is no doubt too small; but, if it be too small to deter persons from injuring the bridge named in this bill, it is also too small to serve the purpose of protecting the other public bridges in the State, considering how often and how easily this offense of immoderate driving upon a bridge may be committed in the rural portions of the State, without the chance of detection or with impunity, because no one will take the trouble to inform; it may be well to make the penalty larger with the view of impressing the public with the magnitude of the offense, and so large that sufficient compensation can be afforded of it to the informer.

The bridge, for the protection of which this special act is asked, is no doubt a valuable one; but there must be many other bridges quite as valuable which need the same degree of protection; and, in fact all the bridges of the State, whether more or less valuable, are entitled equally to protection from injury. The application for this special act should, in my judgment, suggest the propriety of at once amending the general law so as to save the necessity of future demands for special acts in other instances.

Whether the penalty of twenty-five dollars, named in this bill, be in proper proportion to the offense, is a question which I do not consider; but it seems very plain to me that to protect one bridge by a penalty of twenty-five dollars and all the others by an almost nominal fine of one dollar, is to make a very partial and unjustifiable discrimination in extending the care of the State over this kind of public property. The offense is the same whether committed to the injury of one bridge or another. If under the present laws persons are not deterred from injuring bridges by fast driving, because the penalty now affixed to the offense is too light, the obvious and comprehensive remedy is, it seems to me, not to provide for one case out of thousands, but to amend the general law by increasing the penalties in it provided, so that the good effects of the amendment may be felt in every part of the State.

If the Legislature should think proper to amend the general law, I respectfully suggest that the matter may wisely be devolved upon the local authorities within certain limits; that is to say, that empowering either boards of supervisors or commissioners of highways in their respective counties and towns to impose and sue for such fines for this offense as they may think fit, not exceeding a maximum sum, and empowering them to give to the informer a share of the fine, would meet all the needs of the present case, and at the same time provide for others that may hereafter occur.

I regret to differ from the Legislature, with regard to a bill of so little apparent importance; but I am satisfied that the sentiment of the people is wisely and overwhelmingly in favor of diminishing the tendency to a multiplicity of laws, which results in a great measure from just such bills as the one now before me, in which a defect in the general law is sought to be cured for the benefit of one limited locality, and not, as should be done, for the benefit of the whole State.[27]

It is my plain duty to do what I can toward remedying this great evil of needlessly multiplying laws."

The bill was not passed over the veto.

March 22. To the Senate:

Veto of a bill entitled "An act to provide for the preservation of bridges in the city of Binghamton."

"The bill provides that 'any person who shall ride or drive a horse, team or mule faster than at a walk upon any of the river bridges of the city of Binghamton, shall, upon conviction, be adjudged to pay a fine of not to exceed twenty-five dollars for each offense.'

The charter of the city of Binghamton (chapter 291 of the Laws of 1867) gives the common council power (title 4, section 4) to make ordinances ' to suppress and restrain immoderate driving ' in the city, and (section 7, title 4) provides that a violation of any ordinance may be punished by fine or imprisonment, or both, as shall be prescribed in such ordinance.

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[27] Section 143 of the Highway Law, L. 1890, chapter 568, authorizes the highway commissioner to impose a fine of not less than $1 nor more than $5 for riding or driving faster than a walk across a bridge whose chord is not less than twenty feet in length.

It would seem, therefore, that the local authorities of the city already have power to impose and enforce such penalties as they may deem proper and necessary for restraining and regulating the rate of speed at which persons may drive in any part of the city.

The bridges to which this bill applies are those across the Susquehanna and Chenango rivers. Special authority has been given to the common council in relation to those across the Susquehanna by chapter 200 of the Laws of 1869; section 5 of which act confers on them power to ' establish such police regulations, in relation to said bridges,' and to ' establish and sue for such penalties for the fast driving as they may deem advisable.'

Again, chapter 203 of the Laws of 1865, being 'An act for constructing and maintaining free bridges across the Chenango river,' provides that, whenever the bridges contemplated in the act shall be completed, the commissioners of highways shall have charge of them, and may impose a penalty of ten dollars for each offense of driving upon said bridges faster than at a walk. By the charter of the city of Binghamton (section 10 of title 4) the mayor and common council are made commissioners of highways in and for the city.

By their charter, therefore, the city authorities have power to suppress, by such penalties as they choose to impose, immoderate driving anywhere in the city, and, of course, to define the offense of immoderate driving. Special provision is moreover made for the bridges to be affected by the bill under consideration.

If doubt has arisen in the mind of any one about the power of the common council, under existing laws, it is probably due to there being already too many laws applicable to the subject.

It is true if the power of the common council over travel upon the bridges is to be found only in the two special acts already referred to, then, while twenty-five dollars or more may be fixed by them for the Susquehanna bridges, no penalty exceeding ten dollars can be imposed so far as the Chenango river bridges are concerned. A penalty of ten dollars for each offense, persistently enforced (as can easily be done in a city), would seem to be quite large enough to deter persons from fast driving. The higher penalty of twenty-five dollars, proposed by this act, will not, by its mere enactment, put down the practice. The general laws of the State provide a fine of only one dollar for this offense of fast driving upon a bridge (Revised Statutes, part 1, chapter 16, title 1, article 6, sections 122 and 123), and a larger penalty, if needed at all, is more necessary for the protection of the bridges in the rural districts, where the offense may often be committed, without detection, whereas in cities detection can be prompt and sure. [See note 27.]

It being very clear, therefore, that no necessity exists for this special act, I deem it my duty to withhold my approval.''

The bill was not passed over the veto.

March 22. To the Senate:

Veto of a bill entitled "An act to except the counties of Oneida and Schoharie from the operation of the act in relation to fees of county treasurer, passed May 11, 1846."

'' The law, from the operation of which the bill proposes to except these two counties, provides that the several county treasurers ' shall receive such compensation as shall be fixed by the boards of supervisors of their respective counties, not exceeding the half of one per cent for receiving and the half of one per cent for disbursing, and in no case to exceed the sum of five hundred dollars per annum.'

The counties of New York and Kings, consisting chiefly of very large cities, were, in this original act, excepted; and the suggestions in this communication will be considered as not having reference to them.

Since the year 1860, eleven acts have been passed similar to the one now before me, applicable, in every instance but one, to a single county; and in that one to only two counties; which acts either enlarge the limit imposed by the act of 1846, or take it off altogether.

It is evident, from the frequent applications to be relieved from them, that the existing restrictions upon the power of the boards of supervisors to provide compensation for the county treasurer are found to be, in many of the counties, inconvenient. An altered condition of things has made the maximum compensation of five hundred dollars, in the judgment of the people of some of the more populous counties, and of their local authorities, inadequate to the services and responsibilities of the office.

It seems to me that the true remedy is not to be found in special bills, for the benefit of one or two counties at a time, but in an amendment to the general law, which shall either enlarge the limit now imposed upon the compensation to be paid county treasurers, or remove all restrictions upon the discretion of the boards of supervisors in this matter, as the Legislature may deem wise.

The supervisors are, in my judgment, quite competent to decide such a question, and are not likely to be wanting in fidelity to the interests of their respective counties.

If there are any special reasons why Oneida and Schoharie counties should be exempted from the operation of the general law, now in force, I doubt if they can be known to many members of the Legislature, other than the representatives of the two counties; whereas, if the question was brought before the supervisors, it would be freely discussed and thoroughly understood by every one of them, and acted upon by all under a sense of direct responsibility to the people of their respective counties.

If the general law be amended, the Legislature will be spared the necessity of considering applications which will certainly be made hereafter from other counties, for special exemption from the restrictions now imposed, and needless incumbering of the statute book will be avoided."

The bill was not passed over the veto.

March 23. To the Assembly:

Veto of a bill entitled "An act to amend an act to authorize the formation of town insurance companies, passed April 17, 1857, as to its operation on the Fire Insurance Company of the towns of North and East Greenbush."

"My objection to the bill is simply that it proposes unnecessary and, in my opinion, entirely unjustifiable special legislation. The act of April 17, 1857, is a general act, providing for the formation of town insurance companies anywhere in the State; and the fourth section limits the risk in any one policy to two thousand dollars.

The bill, now returned, amends this fourth section, by providing that, in the towns of North and East Greenbush, the limit shall be three thousand dollars instead of two thousand dollars.

I think it will be very difficult to assign a good reason for having a rule for these two towns, different from the one applicable to all the other towns in the State. If the limit of two thousand dollars, in the general law, is too small, it is better to enlarge it, so that it may have universal application.

I notice, by the published proceedings of the Legislature, the introduction of a very large number of special bills, the objects of which can be attained under existing general laws or by slight amendments to them.

It imposes a great labor upon the Executive to examine and return, with objections, such bills when they are passed; and I therefore respectfully, but earnestly, ask such legislative scrutiny as will prevent their passage, and, to some extent, at least, check the admitted evils of unnecessary special legislation."

The bill was not passed over the veto.

March 25. To the Assembly:

Veto of a bill entitled "An act to authorize the canal commissioners to construct a farm bridge over the Champlain canal on the farm of Miles Johnson in the town of Whitehall, in the county of Washington."

"The bill authorizes and requires the Canal Commissioners, upon the recommendation of the Commissioner in charge, to be entered upon the minutes of the Canal Board, to construct and maintain, at the expense of the State, a farm bridge over the Champlain canal, on the farm of Miles Johnson, the expense thereof not to exceed one thousand dollars, and appropriates that sum.

Chapter 207 of the Laws of 1839 confers on the Canal Commissioners power to construct farm bridges over the Erie canal in all places where the same, in their opinion, are reasonably required. Section 4, of the same law, authorizes them to commute with persons claiming to have a bridge built, by paying such sum as they and the claimant may agree upon.

Chapter 372 of the Laws of 1840 extends the provisions of the last cited section to the several canals of the State, including, of course, the canal over which the bridge, referred to in this bill, is to be constructed.

Chapter 332 of the Laws of 1854, section 7, extends all the provisions of chapter 207 of the Laws of 1839, and all other existing laws in relation to bridges over the Erie canal to bridges over the Oswego, Cayuga and Seneca canals.

It is obvious that the Canal Commissioners now have power to commute with persons claiming to have bridges built over the several canals of the State (chapter 372, Laws of 1840), that is to say, they may allow a bridge to be built, and, on the part of the State, agree to pay the costs thereof.

It seems equally obvious that the omission in the law of 1854 to name the Champlain canal as one of those over which all the provisions of chapter 207 of the Laws of 1839 were to be extended was an oversight. There is no reason why the power to construct bridges should be given to the Commissioners as to the Erie and the other canals named, and withheld as to the Champlain canal.

They have, therefore, express power by law now to commute with claimants for bridges on all canals, which is almost equivalent to the power to construct. Express power can be given them to construct by the simple amendment of inserting one word, to wit: 'Champlain' in the law of 1854. This amendment would make the power of the Commissioners on the Champlain canal precisely the same, in terms, as on the Erie canal; they would thus be enabled not only to give the relief asked for in this case, in the form proposed by the bill, but also to grant relief in the same form upon all future like cases upon the Champlain canal. I recommend such an amendment of the general law. Meantime the party who applies for this bill need suffer no inconvenience. Substantially, the Commissioners can, under existing laws, give him all the relief he seeks, by permitting the bridge to be built and paying for it.

The bill is, therefore, unnecessary legislation. It will be noticed also that it not only authorizes but requires the Commissioners to build the bridge, thus taking away from them the discretion with which it has been the policy of all our general laws on this subject to invest them, and with which it is wise to invest them, because no one can judge so intelligently as they of the propriety of claims made for the erection of bridges."

The bill was not passed over the veto.

March 25. To the Assembly:

Veto of a bill entitled "An act to authorize Julian Carter, George E. Daker, Clement Warner, E. Robertson, Peter Hogeboom, James Robertson, William Foster, John Von Hoesen and Peter Vandenberg, to erect and maintain a dock in Oneida lake, in the county of Oswego, and to prevent obstructions to the passage thereto."

"The bill authorizes the parties named in it to build docks and wharves in Oneida lake, adjacent to their lands, and to excavate the mud from about the docks and wharves so erected.

The Laws of this State (Rev. Stat. part 1, chapter 9, title 5, art. 4, section 67) authorize the Commissioners of the Land Office to grant so much of the lands under the waters of navigable rivers or lakes as they shall deem necessary to promote the commerce of this State; but no such grant shall be made to any person other than the proprietor of the adjacent lands, and every such grant that shall be made to any other person shall be void.

It is obvious that application for the privileges asked for in this instance should have been made to the Commissioners of the Land Office, and not to the Legislature, and that no new law is necessary to secure to the parties named in it all that the bill proposes to give them."

The bill was not passed over the veto.

March 28. To the Assembly: Transmitting the annual report of the New York Hospital and Bloomingdale Asylum, and the report of the commissioners of public accounts.

March 31. To the Senate:

Veto of a bill entitled "An act to release and convey the interest of the people of the State of New York in certain lands heretofore patented to Georgiana Bashford."

" The purport of the bill is expressed in its title. It enacts that the title of the people of the State in and to certain lands heretofore patented to Georgiana Bashford by the Commissioners of the Land Office, is ' released and conveyed to the said Georgiana Bashford, and the same is hereby confirmed unto her in fee, and the said patent is hereby ratified and confirmed forever.'

The laws of the State (chapter 283 of the Laws of 1850) authorize the Commissioners of the Land Office to grant, of lands under water, to the owners of adjacent lands, ' so much as they shall deem necessary to promote the commerce of the State, or proper for the purpose of beneficial enjoyment of the same by the adjacent owner.'

In this instance a patent has been issued by the Commissioners of the Land Office, which conveys the interest of the State for both of the purposes contemplated by the law, as is seen by the record in the office of the Secretary of State.

All that the authorities of the State can properly convey has already been granted; and it is not alleged that there is any irregularity or defect of form in the patent, so as to make its ratification or confirmation, by the Legislature, necessary.

The bill before me, if its intent is to convey simply what has already been granted, is unnecessary; if it seeks to accomplish anything else, it is, in my judgment, improper legislation."

The bill was not passed over the veto.

March 31. To the Senate:

Veto of a bill entitled "An act to release and convey the interest of the people of the State of New York in certain lands heretofore patented to William Chamberlain, and four others."

The bill was vetoed on the same grounds as the foregoing bill for the relief of Georgiana Bashford. The bill was not passed over the veto.

April 6. To the Assembly:

Veto of a bill entitled "An act to amend an act entitled 'An act to authorize the towns of Westchester and West Farms to construct a highway in said towns, to be known as the Fordham and Pelham avenues," passed April 28, 1869."

"The bill amends the second section of the original act of last year, which provided that the avenue should be 100 feet wide for its whole length, while the proposed amendment reduces the width, for a portion of the road, to 66 feet. Under the decision of the Supreme Court (see 4th Barbour, p. 70, People v. Supervisors of Westchester County) the owners of the land to whom damages have already been awarded, have now a vested right in the sums so awarded them, of which they cannot be divested by subsequent legislative action. The result will be that, if this bill go into effect, the owners of the land adjoining that portion of the avenue which is to be reduced to the width of 66 feet will receive the damages already awarded for a road 100 feet wide, and yet will regain possession of part of their land, for the public use of which damages have been or must be paid to them.

The town of Westchester has already paid, in good faith, for the right of way through that town with the expectation that the whole avenue is to be one hundred feet wide; and it is represented to me that the portion which it is now proposed to reduce in width is that part of the avenue on which there will be the most travel, to wit, the last mile, leading direct to the railroad station at Fordham.

This proposed amendment appears to me to be improper, because, under the law as given in the case above cited, the public would have to pay for what they would not get, and because it would work inequitably among the parties owning lands adjoining the road and who all have an interest in the whole undertaking. The protests which some of them have filed with me against the bill, I am not, therefore, justified in disregarding.

Protests, also, have been sent to me against any change in the commission in charge of the work, as is proposed by another amendment in this bill provided; but I do not deem it necessary to consider this point."

The bill was not passed over the veto.

April 12. To the Senate:

Veto of a bill entitled "An act for the relief of John Fitzpatrick, assignee of Bernardus Swartwout." [28]

"'The bill not only 'authorizes' but it 'directs the Canal Board to ascertain the value of embankments and lining, and of brush and stone and other materials, for which no estimate was made by the engineer in charge, furnished and constructed by John Fitzpatrick' on a certain section of the canals, 'and to award to said Fitzpatrick the amount so ascertained, in addition to such sum as has heretofore been awarded him.'

It then, by section two, directs the Treasurer to pay the amount so awarded, if any, to said claimant, out of any moneys appropriated or to be appropriated for the extraordinary repairs of the canals.

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[28] The John Fitzpatrick relief bill was not passed over the veto, but another bill on the same subject was passed and became a law, chapter 415, on the 27th of April.

My objections are these: The bill does not refer the claim to the Canal Board for examination, but assumes the fact to be that the claim, in the form recited in the bill exists. It may and probably would be construed as requiring the Board, whatever may be the facts of the case other than those recited, and which might constitute a perfect answer to the claim, to ascertain the value of the several things spoken of, and to award to the claimant the amount thereof when ascertained. In this it differs from the form now usually adopted in referring claims to the Canal Appraisers.

The second section is objectionable because it appropriates money in advance of the award, out of the sum that may by law be appropriated for extraordinary repairs of the canals. It is obvious that if appropriations for claims are thus to be made by separate bills, out of the fund provided for the repairs of the canals, it will be impossible for the financial officers of the State to make proper estimates of what will be required, and that the taking of moneys out of the repair fund for purposes like that contemplated in the bill may be so extensive as seriously to interfere with the work necessary to be done on the canals.''

April 12. To the Assembly:

Veto of a bill entitled "An act to prevent encroachments upon the highways at railroad crossings in the town of Great Valley, in the county of Cattaraugus."

'' The bill makes it a misdemeanor to place or leave timber, logs, railroad ties, or any other obstructions or impediments, in the bounds of highways within one hundred feet of any railroad crossing east of Great Valley station, in the town of Great Valley.

If it be necessary for the protection of the public to make such acts a misdemeanor at the few railroad crossings referred to in this bill, it must be, it seems to me, quite as necessary in many other parts of the State.

The proposed law, if passed at all, should be made general in its application, so that the public everywhere may get the benefit of its provisions.

To declare an act a misdemeanor in one town which is not recognized as a criminal act elsewhere in the State, tends to making the laws, under which the people live, complicated and uncertain, and to creating confusion in the administration of criminal justice. The ordinances of municipal authorities may, within certain limits, be permitted to make local regulations which shall be of force only in the locality; but the statutes of the State Legislature, when defining offenses, should be, in their operation, co-extensive with the territory of the State."

The bill was not passed over the veto.

April 16. To the Senate:

Veto of a bill entitled "An act to extend the charter of the White's Corners and Buffalo Plank Road Company."

"This company was organized, as is recited in the bill, under chapter 210 of the Laws of 1847. That law limits the duration of all companies formed under it to thirty years. The bill now before me proposes to extend the charter of the company for a further period of thirty years. Sections 4, 5, 6 and 7 of the act of 1847, require that a company, proposing to construct a road, shall first obtain the consent of the board of supervisors of the county. Such consent having been given, in this as in all other instances, for a limited period of time, it is obviously proper that a like consent should be required for any extension of the time.

The privileges proposed to be given by this bill are equivalent to a new charter for another thirty years. The same preliminary steps should be taken as were required for the original grant."

The bill was not passed over the veto.

April 16. To the Senate:

Veto of a bill entitled "An act to extend the charter of the East Hamburgh Turnpike Road Company."

The bill was vetoed on the same grounds as the foregoing bill extending the charter of the White's Corners and Buffalo Plank Road Company. The bill was not passed over the veto.

April 16. To the Senate:

Veto of a bill entitled "An act to provide for the erection a soldiers' monument in the county of St. Lawrence."

"The bill empowers the board of supervisors of St. Lawrence county to borrow, on the credit of the county, twenty-five thousand dollars, for the purpose of erecting a soldiers' monument, and to provide for payment thereof by tax.

The purposes proposed to be accomplished by this bill are already provided for in a general law, extending the powers of the boards of supervisors.

Section 4 of chapter 855 of the Laws of 1869, makes it competent for any county, if a majority of its legal voters so authorize, to expend any sum of money for the purpose of a public monument, 'provided that no debt shall be created, nor shall any tax be imposed, for such purpose, unless such expenditure be approved by a vote of two-thirds of the board of supervisors.

The bill proposes unnecessary legislation."

The bill was not passed over the veto.

April 16. To the Senate:

Veto of a bill entitled "An act to enable incorporated rural cemeteries, in Jefferson and Cayuga counties, to acquire title to lands where the owner or owners are unwilling to sell, or when the cemetery association and the owners cannot agree upon the value thereof."

"The title of the bill explains the purport of its provisions. I have grave doubts of the propriety of giving to the associations named in the bill power to acquire lands for burial purposes without the consent of the owners. But if it were wise to do so, the provisions of the bill should not be limited, as they are, to two counties; all these rural cemeteries being organized under general laws, applicable to the whole State."*

The bill was not passed over the veto.

April 20. To the Assembly:

Veto of a bill entitled "An act extending the charter of the Webster Plank Road Company."

"The company was organized under chapter 482 of the Laws of 1857, and chapter 780 of the Laws of 1866. These acts provide that parties purchasing a plank road or a turnpike road at a sale made under an execution or a foreclosure of a mortgage, may form a corporation for the purpose of owning and continuing to operate such plank road or turnpike road, and the number of years the same shall continue shall not exceed the unexpired term of the original incorporation.

The articles of association were filed with the Secretary of State October 1st, 1869; they provide for a corporate existence of ten years seven months and ten days, which, no doubt, was the then unexpired term of the incorporation, whose ownership of the road had been transferred to the parties composing the new association, by virtue of a sale under either an execution or a foreclosure of mortgage.

The original corporation was the Troy and Poestenkill Plank Road Company, which was organized under chapter 210 of the Laws of 1847, its articles of association having been filed on the 20th of April, 1850. The term of corporate existence named therein was thirty years, which was the limit fixed by the act. The present charter, therefore, will not expire until 1880.

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* See Deansville Cemetery Asso. (1876), 66 N. Y. 569; land cannot be taken by condemnation for cemetery purposes.

The Webster Plank Road Company stands in all respects in the place of the original corporation. The act of 1847, under which that original association was organized, requires that any company proposing to construct a plank road or turnpike road shall first obtain the consent of the board of supervisors of the county. Such consent having been made by the law necessary to the enjoyment of the privilege of the company in the first instance, and the consent having been given, in this as in all other cases, for the period of thirty years, as prescribed by the act, it is obviously proper that a like consent from the supervisors of the county should be required as a condition to any extension of the time during which the company shall enjoy its privileges.

The bill before me proposes to extend the corporate privileges of the company for ten years after the expiration of the present charter, which has ten years yet to run, and to do this unconditionally without reference to the board of supervisors of the county; legislation which seems to me to be objectionable.

Whatever the facts of the case may be, there is no necessity for providing for a renewal of the charter now, ten years before it expires."

The bill was not passed over the veto.

April 20. To the Assembly:

Veto of a bill entitled "An act to amend chapter 340 of the laws of 1869, entitled 'An act to authorize the town of Greenwich, in the county of Washington, to issue bonds and take stock in the Union Village and Johnsonville railroad company."

"The original act authorizes the town of Greenwich only, and not the town of Easton, to issue bonds; the proceeds to be used in aid of the construction of the railroad above named.

This bill provides that all taxes, except school and road taxes, collected for the next thirty years in the village of Greenwich, or in the towns of Greenwich or Easton, on the assessed valuation of said railroad, shall be paid over to the county treasurer, to be held by him as a sinking fund for the redemption of bonds issued or to be issued, not by either of the towns named, but by the railroad company.

I am at a loss to see why any portion of the taxes of these towns, which, when raised, are a part of their assets, should be applied to the payment, not of their own debts, but of the debts of a railroad corporation. The bill, if enacted into a law, would, in effect, exempt the property of the railroad company from local taxation, for it applies the taxes collected from the company to the payment of the company's debts. It is noticeable, however, that this purpose does not appear from the title, nor is it plainly stated on the face of the bill."

The bill was not passed over the veto.

April 20. To the Assembly:

Veto of a bill entitled "An act relating to the supervisors of the county of Albany, their terms of office and salary."

"The bill provides that supervisors to be hereafter elected in the several towns and wards of cities in the county of Albany, shall be elected for a term of two years, and that they shall receive a salary of $300 each.

It is, in my judgment, a sufficient objection to this bill that it would, if enacted into law, destroy the uniformity of town governments. In all the towns of the State supervisors are now elected annually. If this bill affected only the city of Albany, and the boundaries of the city and county were the same, it would be less objectionable, the terms of office of the aldermen being now two years. But a large proportion of the supervisors of the county of Albany are elected from rural towns, and there can be no good reason for providing that these towns shall choose their supervisors for two years, while all the other towns in the State, in accordance with the general and long established policy of the State, elect their supervisors every year."

The bill was not passed over the veto.

April 21. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *April* 21, 1870.

"I respectfully call your attention to a subject of great importance, on which I trust you will act before adjourning.

In my annual message I called upon the Legislature to put an end to the policy of practical repudiation, under which, for seven years past, the State has paid, in depreciated paper, the interest upon its coin debt. The contract with our creditors as to all debts incurred prior to the bounty loan plainly calls for gold.

A resolution was introduced in the Assembly early in the session, action on which was delayed until after the recent decision of the Supreme Court of the United States,[h] that payment of private debts, incurred before the passage of the legal tender act, must be made in coin. A preamble was then prefixed to the resolution, reciting that the reason for our State returning to the honest payment of her debts was simply that she might comply with this decision. This preamble is wrong; but the resolution itself, directing all future payments of interest or principal of the State debt (except the bounty loan which was negotiated for depreciated paper) to be made in coin, is right. It is of secondary consequence, however, what reasons may be assigned in the preamble, but it is of great and primary consequence, not only that the State shall pay this portion of her debt in coin, as the Comptroller is already doing, but also that her public record on this point should at once be made right by authoritative declaration of the Legislature. This is especially important now that great and unprecedented efforts are making to induce the Supreme Court to reverse its solemn and deliberate judgment.

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[h] **See Willard v. Tayloe, 8 Wall, 557.**

I plead the importance of your action upon this subject to the honor and good name of this, the great State of the Union, as my excuse for making to you this special communication.

I recommend that the resolution on this subject, which has already passed the Assembly, be also promptly passed by your body.* [See note 1.]

JOHN T. HOFFMAN."

April 23. The Legislature having, by concurrent resolution, requested the return of a Senate bill entitled "An act to amend an act entitled 'An act to authorize Sarah O'Brien, widow of Michael O'Brien, late county clerk of Richmond County, to complete the indices of records in said county,' passed May 8, 1869:" Governor Hoffman sent a message to the Senate, stating that the bill had been signed and filed in the office of the Secretary of State before the recall resolution was received by him. The bill became chapter 360, L. 1870.

April 25. To the Senate:

Veto of a bill entitled "An act incorporating the United States Mutual Benefit Company of New York."

"The bill provides that certain persons already incorporated under the general law 'for the incorporation of benevolent, charitable, scientific and missionary societies, are hereby constituted and made a body politic and corporate, under their present constitution and by-laws, with power to make such other rules and regulations, and to repeal the same at pleasure, as they shall deem expedient; provided, always, that such by-laws, rules and regulations be not inconsistent with the laws of the State or the United States.'

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* The resolution referred to by the Governor as having been adopted by the Assembly does not seem to have been adopted by the Senate, but a clause in the supply bill, chapter 492, included an item of $700,000 for the redemption of state stocks due July 1, 1870, and "for premium on coin for the payment of the principal and interest of the general fund debt."

It then declares that the company may provide for the pecuniary relief of its members in cases of physical incapacity by sickness, casualty or old age, or in the event of the death of a member, for his or her family or heirs; and that it may issue certificates stating the particulars of the contract between the holder thereof and the company, and the assessment to be paid for the benefit of a member.

The Constitution provides that 'corporations may be formed under general laws; but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the Legislature, the object of the corporation cannot be attained under general laws.'[1]

The restrictions of the Constitution, in this respect, are, it seems to me, needlessly disregarded of late years. Nevertheless, the Legislature has carried out the purpose of that instrument so far as to enact general laws under which societies for benevolent and charitable purposes, naming expressly among these, benefit societies, may incorporate themselves; and other general laws under which life and health insurance companies may be organized with corporate privileges.

This company associated itself under the general law for charitable and benevolent societies, and now seeks to be made a corporation by special act, for business similar to that of life and health insurance companies. It seems to me that it would be a proper conformity with the established policy of the State that they should reorganize under the act for the incorporation of life and health insurance companies, which is sufficiently liberal to allow of their adopting any form of affording compensation or regulating the rate of compensation in case of death or sickness.

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[1] Const. 1846, art. 8, § 1.

It is true the general law does not allow companies to combine both branches of this business, that is to say, a company cannot be at the same time a life insurance company and a health insurance company. Under the bill before me both branches of business are contemplated to be done by one association. If the policy of the State is to be changed in this respect, the change should not be limited to a few special instances; but the general law should be amended. So also if the company is more properly to be classed among benevolent and charitable societies, and the act for incorporation of such societies is too restrictive in its provisions, that act should be amended instead of relief being afforded in one or two cases.

If, on the other hand, this company is to act as a life insurance company, it should, like other corporations of that nature, come in under the general law, and so be subject to the supervision of the Insurance Department, and to the provision requiring the deposit of securities with that department.''

The bill was not passed over the veto.

April 25. To the Senate:

Veto of a bill entitled "An act for the relief of the Hopkinton Manufacturing Company."

'' The bill provides for an extension of the time in which the company may make and record the certificate required by law, and then declares the company to be now ' a body politic and corporate ' under the ' act to authorize the formation of incorporations for manufacturing, mining, mechanical or chemical purposes.'

It declares further, that ' all acts heretofore done by or in the name of said corporation are hereby confirmed and ratified, and shall be of the same force and effect as if said corporation had in all respects complied with the provisions of law.'

The language of the bill is too sweeping. It attempts to cure all neglects or violations of the provisions of the general law of which this company may have been guilty. It does not recite the defects in its past proceedings which require a remedy. It makes the company a corporation, although it may have complied with no one of the provisions of the law under which it was authorized to organize.

There is, moreover, no provision in the bill that it shall not affect suits pending or rights already acquired by reason of any acts done or omitted to be done on the part of the corporation.

A general law has already passed, this session, enabling corporations to correct any informalities connected with their original certificate.

If the object of this bill be to cure an informality it is unnecessary; if it has some other purpose, not clearly stated on its face, it ought not to pass into a law."

The bill was not passed over the veto.

April 25. To the Assembly:

Veto of a bill entitled "An act in relation to coroners in the county of Erie."

"The bill provides that the county shall be divided, for the purposes of the proposed act, into three districts; that four coroners shall be elected by the electors of the whole county, two of whom shall be chosen from the city of Buffalo, which is made one district, and one from each of the two other districts. It then provides that such coroners shall reside and keep their offices in their respective separate districts, and exercise their office only within the bounds of the districts in which they reside.

If it were legitimate for the Legislature to enact such a law, it would be manifestly unjust to permit such of the people of the county as reside outside of any one of the proposed districts to vote for a coroner who was to exercise his power only in that district.

But it is not legitimate. A coroner is a county officer under the Constitution,[j] and the Legislature is not competent, in my judgment, to restrict his jurisdiction to any smaller territorial limits."

The bill was not passed over the veto.

April 25. To the Assembly:

Veto of a bill entitled "An act incorporating the Peabody Mutual Benefit Company of the city of New York."

"The bill is objectionable because it does not state definitely the object of the Company. All it says on this point is that the purpose is mutual protection and benefit in case of death. The proposed incorporation is authorized to hold, purchase and sell real and personal property of any kind to the amount of $300,000. It may issue certificates of membership, 'which certificates shall state the agreement with the member receiving the same.' While, therefore, the bill authorizes a general business to the extent of the company's capital, in buying and selling real and personal property; it is also an unavoidable inference, from the terms of the bill, that life insurance is to be a part of the business of the corporation.

The general laws of the State having imposed on all life insurance companies certain restrictions and rules, and subjected them to the supervision of the Insurance Department, and required of them a deposit of securities with that department, I do not feel that I should be justified in approving a bill creating a corporation with power to do business in life insurance, unless the provisions of these general laws are to apply to it as to all others engaged in like business.''

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[j] Const. 1846, art. 10, § 1.

The bill was not passed over the veto.

April 25. To the Assembly:

Veto of a bill entitled "An act to incorporate the National Mutual Benefit Association of the city of Buffalo."

The bill was vetoed on the same grounds as the foregoing bill to incorporate the Peabody Mutual Benefit Company. The bill was not passed over the veto.

April 26. To the Assembly:

Veto of the following bills entitled: "An act to facilitate the construction of the railroad of the Adirondack Company, and its extension to the waters of the St. Lawrence River at the city of Ogdensburgh."

"An act to facilitate the construction of the New York and Oswego Midland Railroad."

"An act to aid in the completion of the Whitehall and Plattsburgh Railroad."

"An act to facilitate the construction of the Buffalo and Washington Railway."

"An act making an appropriation from the State Treasury to tunnel Pine Hills."

To the Senate:

Veto of the following bills: 'An act to facilitate the construction of the Cattaraugus Railway."

"An act to aid in the construction of the Carthage, Watertown and Sackett's Harbor Railroad."

The reasons assigned by the Governor for not approving these bills are stated in the following message, accompanying the first bill relative to the Adirondack road:

'' The bill proposes to grant, out of the State Treasury, about $1,700,000 in aid of the construction of the railroad of the Adirondack Company, a road which, when completed, will extend from Saratoga Springs to Ogdensburgh; the sum so granted to be levied by tax upon the people of the State at large.

The projected road would pass through a part of the State which is very sparsely inhabited, and which is, in fact, almost in the condition of the primitive wilderness. It cannot hope, therefore, to receive from towns and other municipalities pecuniary aid in the manner provided by the general town bonding act, under which many enterprises of this kind have been and are being materially assisted. The road would render accessible a section of the State known to be rich in mineral wealth and to abound in valuable timber. For want of ability to reach our great markets, this region fails to contribute to the general wealth in proportion to its abundant though undeveloped resources. The advocates of the enterprise can well urge that the people of the State at large are interested in and would be benefited by any public work which would induce the settlement of an industrious population in this now unproductive region. The same reason was adduced last year, and will be again adduced now, in favor of granting aid to the Whitehall and Plattsburgh road from the State treasury. In fact, this argument may be made, with varying force, in favor of all the roads which are applying for grants of money from the treasury.

There are seven bills of this nature now in my hands, to wit: This one, in which the whole sum appropriated is not definitely stated, being at the rate of $10,000 per mile, but in which the tax authorized for the purposes of the road amounts to about $1,700,000; one granting $1,500,000 to the New York and Oswego Midland railroad; one granting $500,000 for tunneling Pine Hill; one granting $300,000 to the Whitehall and Plattsburgh railroad; one granting $300,000 to the Buffalo and Washington railway; one granting $150,000 to the Carthage, Watertown and

Sackett's Harbor Railroad Company; and one granting $5,000 per mile to the Cattaraugus railway, which, on twenty-five miles length of road, at which it is reported to me, will amount to $125,000.

It will be seen that these direct gifts from the treasury would amount, in the aggregate, to about $4,600,000, nearly half as much as the entire tax levied last year for the purposes of the State government, including our school charities, &c.

These several bills have passed the Legislature with about the same proportion of votes in favor of each one. It will not be denied that they have not been passed, each exclusively of its own merits, but that the friends of the several projects combined their influence and their votes toward obtaining for all of them the sanction of the two Houses of the Legislature, and that without this coalition of interests no one of them would probably have passed. They are, each and every of them, private and local bills; so that if their proposed enactments were all to be found in one bill, the act would be void under the provisions of the Constitution.[k] I think I am justified, however, in regarding them, passed, as they have been, almost simultaneously by a combined effort of their several friends, as being practically one measure. This scheme of linked legislation does not embrace quite all the measures of this kind presented to the Legislature. One other, at least, is still pending.

It must be regretted that such combined action of the friends of many separate projects, of various degrees of merit, should be deemed necessary to their sanction by the Legislature, or should have been taken to secure that sanction; for it conflicts with the spirit of the Constitution.

It is true, the friends of each of these projects, in advocating it before me, invariably insist that their enterprise is entitled to favor above all the others, because of its superior and peculiar merits. None of the friends of any one of the bills have been urgent to have me approve of the others. Expecting that I could not consent to this great draft on the public treasury, in the aggregate, they separately urge that it is my duty to discriminate in favor of one among the several claims, that one being, of course, in each case, their own; and thus, the practical application of their arguments for discrimination would seem to lead to the rejection of all.

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[k] Const. 1846, art. 3, § 16.

The reasons that can be adduced in favor of the road for which this bill provides, I have already mentioned. The friends of the New York and Oswego Midland bill can urge that their road passes through a well settled and cultivated region, which has hitherto been shut out from direct connection with the great markets, the residents in which have already contributed largely, by taxing themselves through their town governments, toward the completion of the work; and that, notwithstanding these contributions and those of capitalists, there is danger that the progress of the work will be checked unless further aid is afforded. Those who support the bill for the Buffalo and Washington road can claim that, as the road will afford means of transportation from extensive coal regions, it will contribute, in a large degree, to increased commerce upon our canals. The advocates of the Whitehall and Plattsburgh bill have heretofore urged, and do now urge, that their road will connect with the State property and works, and that facilities for travel in and through the important region which the road will traverse are so meagre that, in winter, one of our public institutions cannot be reached except by way of Vermont. Those who ask for the appropriation for the Pine Hill tunnel point to the fact that they were led by a resolution on the part of one House, at least, of the Legislature, passed some years ago, to expect the aid they now ask when they should reach that point in the construction of their work at which they have now arrived; while the Cattaraugus Railway Company argue that they will make an important connection with the Buffalo and Washington road, so that their claim and that of the latter road rest upon precisely the same grounds. The friends of the remaining bill, of the seven now before me, urge like considerations.

The Legislature have made no discrimination among these several measures. The votes given in favor of them severally have been about the same in number. They pronounce them all alike meritorious.

Under these circumstances, I am asked, when urged to discriminate among them, to legislate, by my own action, a certain sum of money out of the treasury for some one of these enterprises; to decide in favor of one and against others, not upon any constitutional grounds or general principle, but simply according to my views of the relative merits and needs of each. I am not willing to take upon myself this task of selection, from which the Legislature has shrunk; and I could not justify myself for undertaking it.

The Legislature, having presented these bills to me, practically, as one entire measure, so far as constitutional restrictions would permit them to do so, I respectfully decline to give them my approval.

It is no time to deal carelessly or lightly with the question of adding to the burdens of the people by new taxes. Prices of agricultural products are shrinking, business is generally inactive, and many whose industry last year, and the year before, yielded them a surplus, now find that, after paying the cost of subsisting their families, the heavy taxes of the times, which have not diminished and are not diminishing, exhaust all that is left. Whatever may be the merits of any of the projects proposed to be aided by these bills, however it may be argued that the enterprises, when completed, will contribute more to the general prosperity of the people of the State than the amount the Legislature proposes to give to them now out of the public treasury, it is necessary for us first to consider whether the present condition of things is such that the people can, with comfort, endure any further draft upon their resources. In my own judgment our people cannot afford, and will not sanction any heavy addition to their taxes, which can be avoided or postponed.

If this be so, that the present outlay of public money, proposed by these bills, would operate oppressively upon the people, it is not wise for us to listen only to the promises held out, of great future returns, to be enjoyed when these various works shall be completed. In public affairs, as well as in private business, there are times when it is, above all things, a matter of primary duty to be cautious about either spending money or incurring debt. In the present condition of the business of the country, and especially of its agricultural industry, on which all other branches of industry depend, it is the duty of those who have the charge of the public purse to be careful how they make new drafts upon it.

I have not entered into the question of the propriety of granting aid from the State treasury, without express consent to the people, to any enterprise whatever, which, although it may be of great service to the general good, is still a private undertaking, no part of the profits from which, when realized, are to go into the treasury of the State. Whether it is right to do so in any case; whether it is not in opposition to the spirit of the Constitution,[1] are questions about which a wide difference of opinion may be found to exist. It is not necessary to enter into this discussion now. The experience of the friends of the several enterprises of this kind now on foot, taken for several years past, has shown very clearly that no one of them can secure a legislative appropriation except in combination with others, and that, with the progress of time, the necessity for and the magnitude of these combinations greatly increase. No railroad can secure a legislative donation of State aid of $1,000,000 or less, except on condition of the donation of many millions to others. The most practical and just way to secure contributions from the State treasury in aid of an enterprise like this, upon its own merits, and the way which is in harmony with the Constitution and with the rights of the people at large, is to submit the question to the people for their decision. In a message to the Senate last year, accompanying a bill returned without approval, which was like this one, and which proposed to grant aid to the Whitehall and Plattsburgh railroad, I called attention to this point and said, in substance, that if it was desirable for the State to extend aid to undertakings of the nature of those now under consideration, it would be much fairer to the people and probably much more for the benefit of the enterprises themselves, that the proposition should be submitted to a vote of the whole people of the State, whether they would incur a debt for the purpose.

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[1] Const. 1846, art. 7, § 9.

The Constitution forbids the lending of the credit of the State to or in aid of any association or incorporation;[m] but it also provides that a debt may be authorized by law for any work or object to be specified therein, the principal thereof to be paid within eighteen years, such law to be submitted to and approved of by the people.[n] If this course should be pursued, the taxes for the amount contributed by the State could then be spread over a long period, instead of being levied, as these bills propose, almost immediately.

In all cases where towns are authorized by law to contribute money or to lend their credit to railroad companies, the consent of a majority of the taxpayers of the town is required to be first obtained. Is it not proper that, when money is to be given from the State treasury for similar purposes, a like consent should be obtained from a majority of the people of the State?

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[m] Const. 1846, art. 7, § 9.

[n] Const. 1846, art. 7, § 12.

I cannot approve of these bills as a whole, and I decline for the reasons given to discriminate among them.

It has been suggested to me to retain these bills until after the adjournment of the Legislature, but I feel it to be my duty, both to the Legislature and to the people, in view of the principles involved and of the magnitude of the enterprises, to return them with my objections.

I therefore return this bill, as I shall all the others, without my signature.''

The bills were not passed over the veto.

April 26. The Legislature adjourned without day.

ACTION ON BILLS AFTER ADJOURNMENT OF THE LEGISLATURE.

May 6.

Veto of the following bills:

"An act to extend the operation and effect of the act passed February 17, 1848, entitled 'An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes.'"

'' Section 3 extends, indefinitely, the time within which the capital stock may be paid in; whereas the original act prescribed a definite period for such payment. There can be no good reason for the change.''

"An act to incorporate Protection Hose Company No. 3, of the city of Binghamton."

'' The charter of the city of Binghamton (chapter 291, laws of 1867) gives power to the city authorities to organize and regulate a fire department, fire companies, &c.''

. . . .

"An act to authorize the construction of gas works and the manufacture and sale of gas for the purpose of lighting a portion of the city of New York, and the streets, avenues, squares, and buildings therein, and to lay pipes for that purpose."

" The bill authorizes the association to lay pipes in the Central Park, without requiring the consent or supervision of the Commissioners of the Park. Gas companies may, moreover, be formed under general laws."

"An act to authorize the town or village of Hornellsville to raise or appropriate money, to be used in constructing, or procuring the location or construction, within the village of Hornellsville, of a building or buildings for a machine shop, or for manufacturing or repairing purposes, and for the purchase or lease of lands therefor, if necessary." [29]

" The bill provides that, with consent of those representing a majority of the taxable property of the town of Hornellsville, commissioners, appointed by the county judge, may issue bonds on the credit of the town to the amount of thirty thousand dollars, principal and interest thereof to be paid by tax. The proceeds of said bonds, when sold, are to be used for the purchase of a site for and the construction of a building in the village of Hornellsville, ' to be used for a certain specified machine shop, or for manufacturing and repairing purposes.' The Commissioners are authorized to lease the building on such terms as they think proper; but it does not appear, by the bill, how the rent is to be applied, nor whether the building is to be town property.

It is evident the building is not to be used for public purposes, but for private business. No remonstrance has been sent up against the bill; on the contrary, the many letters received by me from well-known parties leave little room to doubt that the desire is very general, if not universal, among the people of the neighborhood, that they should be permitted to tax themselves for this purpose. If this desire was really unanimous among them, there would be no need of the bill, for every one would then voluntarily contribute his share.

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[29] As to the power of a municipal corporation to aid a private enterprise, see Weismer v. Douglas (1874), 64 N. Y. 92.

Whatever may be said in favor of permitting municipalities to levy taxes to aid in constructing railroads passing through them, which afford them valuable highways, the argument will not apply to taxes for such purposes as those of this bill. If a town may tax its people to build a factory, it may do the same for any other purpose of private business; it may do so to build a hotel, or a place of public amusement, or a church for some one denomination, or any other structure not connected, in any degree, with governmental or public purposes, which a majority may deem conducive to the pecuniary interests or general prosperity of the neighborhood. It may be that the building of the proposed factory would confer immediate benefit upon all the people of Hornellsville; but the time may come when they will be glad to find protection in the principle that there is a limit beyond which the taxing power should not be exerted, and that the precedent of overstepping that proper limit was not set in this instance, urgently as they now desire it.

Even if I could be assured that every taxpayer and every voter in Hornellsville wished the bill to become a law, I ought not to give it my official sanction."

"An act to provide for paying the debts and fitting up and improving the show grounds of the Saratoga Agricultural Society."

"This bill directs the Supervisors to levy a tax for the benefit of a private corporation. The Supervisors, moreover, are not only deprived of all discretion upon the question of the propriety of the tax, but they are not even empowered to direct or supervise the expenditure; nor is the object one which comes properly under the taxing power, for reasons which are stated in my objection to the bill for a machine shop at Hornellsville."

May 9.

Veto of the following bills:

"An act relating to the care, maintenance, and medical treatment of insane persons, and of their removal from the State Lunatic Asylum at Utica or elsewhere to the County Poor House in the county of Saratoga."

"The bill is special legislation for only one county, and the policy of sending insane persons to the county poorhouses not a wise one."

"An act to amend an act entitled 'An act to consolidate the several school districts and parts of districts within the corporation limits of the village of Saratoga Springs, and to establish a Free Union School or schools therein,' passed April twelfth, eighteen hundred and sixty-seven."

"The bill takes away from the village authorities the power they now possess to levy taxes for all the ordinary expenses of schools; and requires a vote of a majority of the taxable property to authorize expenditure in any year beyond a certain specified sum. It would work injuriously to the schools, possibly, and is, at all events, special legislation for one village only."

"An act to authorize the Commissioner or Commissioners of Highways of the town of Florence, Oneida county, to locate and establish the routes and bounds of the highways in said town."

"The Commissioners of Highways of the several towns of the State already have power, under the Revised Statutes (part 1, chapter 16, title 1, art. 4, sec. 100), over the subject matter of the bill."

"An act to provide the Flatbush Fire Company with funds for the purchase of hose and keeping its property in order."

"Bill provides that the fire company shall borrow money for its special use, and the repayment of the loan shall be a town charge, to be levied by tax; the loan, if necessary, should be negotiated by the town officers and the fund be controlled by them."

"An act for the relief of Clark Snook."

"The bill is defective. It authorizes the Canal Board to determine the claim, and then the appraisers are to award 'upon the evidence,' the damages, &c."

"An act to consolidate the several school districts, and parts of school districts, within the corporate limits of the village of White Plains, in the County of Westchester."

"Most that the bill proposes can be accomplished by the people of the village under the General Laws (chap. 555, laws of 1864, title 9). The provision exempting school property from taxation is superfluous, and others are objectionable; such as that which authorizes the Board of Education to mortgage the school property."

"An act to incorporate the village of New Hartford."

"The bill provides for organization by a first election on the first Tuesday of May of this year. As that day is already past, the signing of this charter would not afford the people so early an organization as they can obtain under the general Village Act, passed at the last session (chap. 291, Laws of 1870); the powers they ask for are all conferred by that act, and I learn the promoters of this bill prefer now to organize under the general law."

"An act to authorize the Trustees of the 'Evans Mills Cemetery Association' to raise money to fence the said cemetery ground." [30]

"The bill authorizes a private corporation to levy and enforce a tax upon its members in the same manner as a public tax for educational purposes could be enforced, including, of course, distress of personal effects. Provision should have been made by its own rules for all necessary and proper contributions from its members."

"An act for the determination and settlement of the claims of the heirs-at-law of Christine Shenandoah."

"This is a claim for improvements on lands ceded to the State by the Oneida Indians, by treaty in 1824. It appears by papers in the Comptroller's office that the improvements on lot 31, named in this bill, were appraised then as belonging to the Widow Honyoust, the principal claimant named in the bill, and that she was paid in June, 1825, the sum so appraised, and that in 1828 she was paid for improvements on other lots, at which time she executed a second receipt and a quit claim for *all* improvements.

The State afterwards, under a special act of the Legislature, permitted this lot to remain in possession of the Indians, for a parsonage, for ten years; and when this use ceased and the State sold the ground, the value of the improvements was given up in the settlement with the purchaser, who was the same person who had occupied it at the request of the Indians. So that the State has dealt liberally in the matter throughout, and no claim can exist."

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[30] The Membership Corporations Law, L. 1895, chapter 559, section 52, as amended, authorizes a cemetery corporation to impose a tax on a burial lot, and enforce collection thereon by warrant as in the case of school taxes, or the corporation may prevent the use of a lot until the tax is paid, or may, after a default of five years, sell the unused portion of the lot.

The Governor sends to the Secretary of State, without his signature, the following bills; all such claims being provided for in the general law conferring power on the Canal Appraisers, Chapter 321, Laws of 1870:

Relief of Charles C. Smith.

Relief of Guy Davis.

For the appraisal and payment of damages, Stillman Cutler, Tonawanda creek.

For the appraisal and payment of damages to Benjamin Benson.

Relief of Peter W. Anthony and others.

Relief of John D. Blood and others.

Relief of Charles E. Fraser and others.

Relief of Esther Backer.

Relief of James Carney and others.

Relief of Valentine Reynolds and others.

Relief of Joseph D. Loveland and others.

Relief of George Becker.

Relief of Aaron White.

Relief of Charles Smith and others.

Relief of Erskine G. Clark and others.

To authorize Canal Appraisers to hear and determine claim of Thomas McGuire.

Relief of Charles H. Green and others.

Relief of Edwin B. Bissell.

Relief of George Williams and others.

Relief of Noble Jackson and others.

Relief of the city of Syracuse.

Relief of George Hendricks and others.

Relief of Roswell S. Burrows.

Relief of Daniel Cotter.

Relief of Jeremiah Flood.

Relief of Henry J. Seymour.

Relief of Michael Storen and others.

Relief of Luther Wright and William O. Hubbard.

Relief of the 'Christian Church' of the village of Tonawanda.

May 10.

Veto of the following bills:

"An act to incorporate the Frewsburg Cemetery Association."

"There is a general law authorizing the organization of such associations."

"An act to repeal chapter 507 of the Laws of 1869, entitled 'An act to alter the Commissioners' map of the city of Brooklyn,' the same being for the purpose of opening Pratt street in said city."

"The bill is defective, the title not corresponding with its provisions. It does not repeal the former act, but simply amends one section."

"An act to provide for the organization of the 'Barnes's Corners Burial Association;' to authorize said association to tax the lots in said burial ground at Barnes's Corners, in the county of Lewis."

"There is a general law for the organization of such associations."

"An act to incorporate the Haverstraw Savings Bank of the town of Haverstraw, in the county of Rockland."

"The Legislature of 1869, passed a general act in relation to savings banks, imposing certain conditions on the action of subsequent Legislatures in reference to bills chartering such institutions. These conditions the Legislature of 1870 have disregarded, as they had a right to do. Nevertheless, in conformity with the spirit of the fifth section of the act of 1869, I have submitted this bill to the Superintendent of the Banking Department, and he having found objections to certain provisions in it, I decline to approve it."

"An act to amend the charter of the Hamilton Savings Bank."

"Authorizes the removal of the bank to another county."

"An act to incorporate the Cascade Fire Company No. 1, of the village of Little Falls."

"The charter of the village empowers the trustees of the village (Laws of 1850, p. 700) to maintain fire engines and other apparatus for extinguishing fires."

"An act to incorporate the American Mutual Benevolent Association of New York"

"May organize under existing general laws."

"An act to incorporate Canton Lodge Number Five Hundred and Fifty-eight, Independent Order of Good Templars."

"May be incorporated under the existing general laws."

"An act authorizing a part of the town of Hector, in Schuyler county within certain defined lines, to bond under the general law authorizing towns to bond for railroad purposes."

"The bill sets off part of a part of a town by metes and bounds, and authorizes that part to incur a separate debt for railroad purposes. I refused to approve a similar bill last year for a town in Suffolk county. Such a law would create confusion. It erects a part of a town into a municipal corporation for this one purpose, and no other."

May 11.

Veto of the following bills:

"An act to amend the charter of Canastota."

"Nothing is sought for in this charter which cannot be obtained by incorporating under the general act for villages of 1870, except one or two things of secondary importance, which are of doubtful propriety, if not positively objectionable. I prefer, therefore, to leave the people of the village to incorporate under the general act, which they can do with as little delay as would be occasioned by the provisions of this bill.''

"An act to authorize the Board of Supervisors of Essex county to levy and assess certain taxes upon certain lands in said county."

'' The bill directs supervisors to levy specific sums by tax of certain lots of lands, without saying for what purpose.''

"An act to change the number and term of office of the School Trustees of School District Number Seven, in the town and county of Niagara."

'' The bill legislates out of office some of the existing trustees, duly elected under the Union Free School act, and makes the terms of office of future trustees different from that prescribed by that general law; such special laws, for a single district, tend to make the school law complicated to no permanent or general benefit.''

"An act authorizing the Commissioners of Highways of the town of Fowler, in the county of St. Lawrence, to construct a highway across certain lands in said town, and to acquire title to said lands."

'' The bill provides that the Commissioners of Highways of this one town shall have power to acquire title to land in a highway, in the same manner as is provided in the general railroad act. I see no reason why any power should be conferred on these officers not given to the same class of officers throughout the State.''

"An act fixing the size of barrels used for packing fruit and vegetables."

'' The custom of trade will regulate such things. But if it be desirable to regulate them by law, the measure should be accurate and permanent. In 1862 the barrel of apples, peas, and potatoes was defined by law as equivalent to so many quarts, dry measure. (See chapter 178, Laws of 1862.) This bill repeals that law, and substitutes the less accurate definition that the fruit barrel shall be of like dimensions with the flour barrel.''

"An act to amend the charter of the American Popular Life Insurance Company."

'' The Superintendent of the Insurance Department objects to this bill on the ground that it would compel him to adopt a different rule for estimating the condition of this one company from that which is in use by the Department for all Life Insurance Companies. I consider his objections sound, and must, therefore, withhold my signature.''

"An act to change the name of the Knox Railway Clamp Company, to the Sheridan Manufacturing Company."

'' Can be done under general act, chap. 322, Laws of 1870.''

"An act to provide for the draining of certain lands in the towns of Cicero and Clay, in the county of Onondaga." [31]

''A very comprehensive general drainage act was passed last year (chapter 888, Laws of 1869) under which all the relief proposed by this special bill can be had.''

"An act to amend the charter of the village of De Ruyter, Madison county, and to alter the bounds and enlarge the powers of the corporation of said village."

'' The bill provides for an extension of the territory of the village, against which extension remonstrances are filed.

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[31] A constitutional amendment adopted in 1874, included a provision prohibiting local or private laws " for draining swamps or other low lands."

An amendment to article 1, section 7, included in the Constitution of 1894, authorized general laws for the drainage of agricultural lands.

This provision was construed in Re Tuthill (1900), 163 N. Y. 133, which held unconstitutional in part the act of 1895, chapter 384, containing procedure for carrying the new provision into effect.

It appears the village is in debt to the extent of $20,000, and no provision is found in the bill for protecting the territory which is to be added from the taxes to be levied therefor."

May 12.

Veto of the following bills:

"An act to amend chapter 907 of the Laws of 1869, entitled an act to amend an act entitled an act to authorize the formation of railroad corporations and to regulate the same, passed April 2, 1850, so as to permit municipal corporations to aid in the construction of railroads, passed May 18, 1869."

"The bill contains a provision allowing all savings banks to invest a portion of their deposits in town bonds. Such a provision is not proper in a bill, the title to which makes no reference to savings banks.* Moreover, it is not well to authorize an investment of savings banks deposits in securities not easily negotiable in the open market."

"An act to enable the town of Clifton to aid the construction of the railroad of the Adirondack Company."

"Bill unnecessary. The town can do what the bill proposes under the General Town Bonding act."

"An act to amend title 16 of chapter 8, part third of the Revised Statutes, relating to proceedings for the draining of swamps, marshes, and other low or wet lands, and for draining farm lands, as amended by chapter 888 of the Session Laws of 1869." [See note 31.]

"The bill is defective. It does not amend any specific section of the act of 1869. It is not described as a substitute for any part of that act nor as an addition to it. It is not necessary, as an addition; for the act of 1869 already provides for the cases mentioned in this bill."

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* Const. 1846, art. 3, § 16.

"An act to incorporate the New York advertising company."

"The bill undertakes to regulate the use of the streets of New York city, which should be left to the municipal authorities."

"An act incorporating the Commercial Credit Guaranty Company of the city of New York."

"Sec. 2 relieves the Company from the restrictions, in the general law of the State, as to the rates of interest.

Section 4 authorizes general dealing in real estate."

"An act to authorize the levying of an annual tax upon the owners of lots in the Lyons Cemetery, for the improvement thereof, and to provide for the collection of the same." [See note 30.]

"The bill proposes to authorize the trustees of a cemetery to levy a tax of five dollars annually for each lot sold to any person in said cemetery, and to issue their warrant to a collector appointed by themselves, who shall have power to collect the tax in the same manner as school taxes are now collected. The bill gives undue power to non-official persons; and if the lots sold were to be subject to an annual rent, it should have been reserved by the deed of conveyance."

"An act to enable the county of Richmond to lay out a Central Park."

"Without considering the question of the necessity or propriety of laying out a large public park in a beautiful rural region like Staten Island, I decline to approve of the bill because it provides that assessments are to be made, 'as in case of street openings in New York city.' The rule of assessment for such purposes varies in that city, and thus this provision would be void for uncertainty."

May 13.

Veto of the following bills:

"An act to legalize the acts and proceedings of the Board of Trustees of the village of Cohoes and the assessors of said village in relation to the construction of Canal street sewer, and raising funds to pay for the same."

"It is admitted, on the argument before me, that the assessors have not merely neglected formalities, but have levied assessments in direct violation of law, and which they had no right to levy. It is not right that this bill, which seeks to confirm illegal acts and not merely to cure errors of formality, should become a law."

"An act to incorporate the Association of the Bar of the city of New York."

"The sixth section which has been added to the printed bill has no connection with the other parts of the bill, and the proposed incorporators prefer to organize under the general law."

"An act to extend and improve Fourth street in the city of Brooklyn, from the northerly side of Division avenue, through part of the Nineteenth, Thirteenth, Fourteenth and Seventeenth Wards of the said city of Brooklyn."

"The second section provides 'that the Commissioners may improve, grade, and pave said Fourth street.' What commissioners it refers to is uncertain. It cannot mean Commissioners of Estimate, provided for by section four. It does not say the Water Commissioners of Brooklyn, who now have power to regrade and repave.

Power to grade and pave is now with the Common Council.

The act in an essential part, therefore, is uncertain, and must be rejected."

"An act to extend, widen, alter, and improve Banker street, and to close a portion of the same in the city of Brooklyn."

" The provisions of this bill are extraordinary. It opens a street laid out on the city map, widens one portion of it; then, changing the map, closes another portion now in process of being opened by the Common Council, makes it the duty of the Common Council to proceed with the work proposed by the bill, and directs assessments on lots without regard to the value of the lots, or the general law restricting the amount of the assessments in similar cases. No good reason is assigned for these extraordinary provisions."

"An act to authorize the Trustees of the village of Charlotte, in the county of Monroe, to raise money to build a police office and lockup."

" The trustees have express power, by the village charter, with the consent of the taxpayers, to expend any amount necessary to the purposes for which this bill provides."

"An act to enable the electors of the town of Newtown, county of Queens, to vote in districts for town officers, and to provide for the apportionment of the same to the districts herein named, and also for the raising of moneys for the maintenance of the town poor and other purposes."

" The provisions of this bill conflict with the charter of Long Island City, which has just become a law."

May 14.

Veto of the following bills:

"An act to amend an act entitled 'An act to amend an act entitled 'An act to continue in force an act entitled an act to construct certain roads from the settlements in Lewis county to Brown's Tract, in Herkimer County.' "

" The bill revives two acts which have already expired without anything having been done under them, and it does not indicate what is to be done, except by reference to two previous laws. This is an objectionable form of legislation. It would have been as easy and certainly more proper to have re-enacted such provisions of the former acts as were necessary, so that every one could readily comprehend what the new law authorized."

"An act to protect the citizens of the State of New York from empiricism, and to elevate the standing of the medical profession."

"The provisions of the bill are needlessly restrictive, and would oftentimes operate disadvantageously and harshly, nor are they necessary to elevate the standing of the medical profession."

"An act authorizing a loan to the county of Warren, and for levying a tax to repay the same, and providing for the application thereof."

"The bill authorizes the Comptroller to loan $43,500 to the county of Warren, to be repaid hereafter by proceeds of taxes to be levied; $17,500 is to go into the hands of certain railroad commissioners of the town of Queensbury, to be applied on account of certain bonds issued by that town for railroad purposes. The validity of these bonds and the legal liability of the town therefor are disputed by some of the taxpayers, and, I learn, very generally so. In view of the dispute and of the decision of the Supreme Court in a case involving similar questions° (51 Barb., 312), the Comptroller assures me he would not feel justified in making the loan authorized by the bill, and I decline to approve it."

"An act to authorize the election of Railroad Commissioners in the town of Paris, in the County of Oneida."

"The bill would exempt this one town from the provisions of the General Town bonding act, which requires

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° Sweet v. Hulbert (1868), 51 Barb. 312.

that railroad commissioners shall be appointed by the County Judge, and is therefore, objectionable as special legislation.''

"An act to encourage the construction of sidewalks in the village of Unadilla, Otsego County, and to repeal chapter 342, Laws of 1860, and chapter 420, Laws of 1869, and all acts heretofore passed in reference thereto."

'' This matter should be regulated at home. This is, at least, the fourth bill relating to these sidewalks since 1860. The width was at first limited to four and a half feet — this bill extends them to six feet. The amount of exemption from highway tax is changed also, from time to time, by the several bills, and it is impossible to know whether injustice is not done by such exemption, be it more or less.''

"An act to amend the charter of the village of Palatine Bridge."

'' The bill permits non-residents of the village to vote at charter elections.''

"An act to incorporate Ione Yacht Club."

'' This company should be incorporated under the general law.''

"An act to amend an act, entitled 'An act to improve the west part of the road formerly known as the Buffalo plank road, in the county of Erie,' passed April 21, 1865."

'' Special legislation detracting from the proper powers of the Commissioners and Overseers of Highways as to highway labor.''

May 16.

Veto of the following bills:

"An act to regulate proceedings in the construction of roads and laying out highways in the town of Newtown, Queens County."

'' The provision of the first section that all highways directed to be laid out by any law of the State by commissioners in the town of Newtown' shall be laid out, constructed, and completed in such manner as such commissioners may deem expedient and to the best interests of the public,' is too sweeping a delegation of power and discretion, which in the special acts heretofore passed, has been always limited."

"An act to incorporate The Eagle Hose Company, Number Two, of the city of Buffalo."

"Full powers have been given to organize a fire department, in the new charter (chap. 519, Laws of 1870) to the city authorities of Buffalo."

"An act to create a separate road district in the town of Worcester, county of Otsego."

"The bill creates a special road district in and over which the Commissioners of Highways in the town shall have the same control and be charged with the same duties as in other districts, but they are not to appoint the overseers. The laws of the State give the Commissioners of Highways the appointment of their subordinates, the overseers. I see no reason for making this one exception."

"An act to appoint commissioners to lay out and construct certain necessary avenues in the county of Richmond, and provide for such construction and the necessary expenses thereof."

"On the 5th of May I signed a general bill appointing commissioners to report a plan for the whole island as to roads, parks, &c., &c., with which this would conflict."

"An act to incorporate the Mental and Moral Improvement Society of Irvington, in the town of Greenburg, and County of Westchester, State of New York."

"May be incorporated under the general laws for literary societies."

"An act to revive the charter of the Saratoga County Mutual Fire Insurance Company and to reduce the number of directors."

"The bill revives an old charter never used. I have submitted the bill to the Superintendent of the Insurance Department, and his opinion is that the bill should not become a law, in which opinion I concur. The parties desiring this revival of the charter can organize under existing general laws."

"An act to amend an act entitled 'An act to incorporate the city of Cohoes,' passed May 19, 1869."

"Through inadvertence, probably, this bill as passed leaves out the word 'schools' in the section providing for tax to be levied. The word was in the original act. If I approved this bill the schools in Cohoes would be left without provision for their support. For this reason, the whole bill must fail."

May 16.

Veto of a bill entitled "An act to incorporate the New York Arcade Railway, and to provide for the construction of a subsurface railway in the city of New York."

"The bill was passed during the last hours of the legislative session, and did not reach the Executive Chamber until after the final adjournment of the two Houses. I have given to it careful and deliberate examination and reflection, notwithstanding the labor thrown upon me of considering near four hundred other bills sent to me, in like manner, after adjournment.

The professed purpose of this project is to give increased facilities of travel from one extremity of the city to the other, and to and from intermediate points. The city of New York is in great need of additional means of transit between that portion of it devoted to business and that occupied chiefly for dwellings. The form of the city is such that its growth can go on only in one direction. At its northern extremity alone can cheap homes be had. The Central Park, the place for the recreation of its citizens, is also at a point remote from the centre of their business. The necessity for additional facilities of transit grows with each year, and any measure which looks to supplying so great a want commends itself to favor with all classes of the community in that city, and is entitled to attentive consideration from the authorities of the State. For these reasons and also because of the character of its chief promoters, among whom are such well-known and influential citizens as John A. Griswold, of Rensselaer county, and ex-Senator Labau, of Warren county, named in the bill as corporators, I have felt it my duty to give especial attention to the proposed plan. The unreserved support which the scheme is receiving from some of the leading journals in the city of New York, doubtless representing a large share of public sentiment, increases the responsibility of my action.

The bill authorizes the fifty-seven persons named in it, or their assigns, to form themselves into a corporation, with a capital of ten millions of dollars, which may be increased to twenty-five millions.

The company are empowered to locate, construct and operate a subsurface railroad, on which steam is to be the propelling power, from a point in or near the Battery, up Broadway to Fourteenth street, thence through Union Square to Seventeenth street, thence up Broadway to its junction with Eighth avenue, and thence to a junction with the Hudson River Railroad. It is not defined where this junction shall be made; it may or may not be at the extreme end of the Island. There is also to be a branch, so called, from Union Square up the Fourth avenue to Harlem River. They are also authorized to enter upon and appropriate any street which crosses the proposed route, to the distance of a hundred feet, for the purposes of depots, store-houses, light, ventilation or otherwise, restoring the roadway over their excavations in the same manner as over the main line of their railway.

The company are, moreover, authorized to acquire the title to such real estate as may be necessary to enable them to construct, maintain, and operate said railway, and construct and maintain proper platforms, stairways, station depots, and buildings or other property, at such points along said route as may be more convenient and suitable for the ingress and egress of passengers and freight, and requisite for the operation of said railway and for proper communication between said platforms, stairways, station depots and buildings. If the owner of any property declines to sell, it may be taken against his will and his compensation be fixed by Commissioners appointed by the Supreme Court; but the rule for estimating damages and benefits in such instances is by this bill made a special one, varying from the rule now established in all other like cases. The company are empowered to take, for the purposes above specified, any portion of any public grounds, parks, or places along the route; no portion of any public grounds, parks or places, so taken, to exceed five hundred feet in length and one hundred feet in width; which dimensions would take in nearly the whole of the Bowling Green. They may also extend the tracks of their railway in open excavations or on the surface from the point of commencement at the southern extremity of Broadway, into and through the Battery to a point therein near the South ferry. It is expressly provided that for any property of the corporation of the city of New York, so taken, no compensation shall be awarded or paid.

The bill provides that the railway is to be constructed on the plan, substantially, of the improved Arcade Railroad; no other description is given. No limit is put upon the depth or the width to which the streets may be excavated; the words of the bill are simply, to a sufficient depth and width. Nor is any limit put upon the number of tracks which may be laid side by side, and for which sufficient width is to be taken; the number of tracks permitted by the bill is four or more. The upper roadway and sidewalks are to rest upon iron girders or beams, supported by iron tubular columns or masonry, or both; and the surface of the streets is to be, substantially, restored as it was before the excavation. It is provided that the lower sidewalks, nothing being said of the upper ones, shall not be excavated unless with the consent of a majority of the owners owning a majority of the property along the entire proposed route. It is further provided that the vaults now under the streets, built by private owners under license from the city shall not be appropriated by the company unless with the consent of a majority — not of the vault owners, but of the property owners along the entire line of said railway. In effect, therefore, all the vaults in the most valuable part of Broadway may be appropriated by the company without the consent of any single person among those now occupying them, by means of overwhelming votes from owners along Fourth avenue and other parts of the route, where there are no vaults, and who have, consequently, no interest in the question.

The upper sidewalks are to be lessened, everywhere, six feet in their width, so as to provide an open space for light or ventilation.

Sections nine and ten of the bill provide for cases of interference with sewers, gas-pipes, and water-pipes, and, after putting the expense of any changes of these upon the company, give to them the use of streets parallel to their route for the purpose of effecting these changes. The provision for the protection of the people in the accustomed use of gas, water, and the sewers, is that the company shall not unreasonably stop this accustomed use.

Section eleven forbids interruption of travel on streets other than Broadway, for more than a reasonable time. It also provides that the Commissioner of Public Works may compel the execution of the work in such a manner as not to interfere with the surface of Broadway, except under such conditions and regulations as he may prescribe; but this power of supervision and direction on his part is limited to that portion of the work south of Fourteenth street.

By section nineteen the company are forbidden, until the capital of ten millions is subscribed and twenty per cent. thereof paid in, to disturb any ground except below Wall Street.

The mayor, aldermen, and commonalty of the city of New York, and all other companies, are prohibited from giving permission to any person to do anything to hinder, delay, or embarrass the construction of said railway; and it is, by the bill, made the duty of the mayor and common council and of all officers of the city corporation, within their respective departments, to do such acts as may be officially required of them, and needful under this act, to promote the construction of said railway.

I have been thus particular in analyzing and describing the bill now before me, because it is necessary to the full comprehension of its character, and because the statement of its provisions seems to me to be equivalent to an argument.

I cannot permit the bill to become a law. I, therefore, send it to the office of the Secretary of State without my signature. It is my practice to briefly assign my reasons and give them to the public, although not required so to do by law, for withholding my approval from bills which reach my hands after the adjournment of the Legislature; not so fully as if these reasons were to be submitted to and passed upon by the Legislature, but sufficiently so to convey to the people the views which control me in each case.

I take this course in reference to the bill under consideration; and here it is proper to state that it is now represented by counsel and others that the arcade plan of the road will probably, of necessity, be abandoned and the road be constructed upon what is called the tunnel plan; to cover which, the provisions of this bill are, it is claimed, sufficiently comprehensive. It must be borne in mind, however, that the corporation is named the 'Arcade Railway Company.' The only description of the road in the bill is that it is to be upon the plan, substantially, of the 'Improved Arcade Railroad,' only some minor and unimportant details of construction being given. Beyond this, there is no way to define the precise plan except by the highly colored pictures or prints which have been exhibited to the Legislature and to the Executive. As the Arcade Road it has been discussed, considered, and applauded as possessing superior advantages. I must consider the bill as authorizing and contemplating chiefly the construction of such a work, and I cannot be expected to approve it upon a mere assurance that a sub-surface road upon a different plan, not defined or described in the bill, will probably be built.

My objections, among others, are these:

First. The so-called arcade plan is a new and untried experiment. Skilful engineers differ widely in their judgment of it; some maintaining it to be practicable, but others condemning it as a visionary project. The removal of the present pavements of Broadway and the other streets included in the grant, and the opening of a great trench through them, with no limit upon the depth or width of the excavation, may endanger the safety of every building on Broadway and the other streets along the route. Damage may be done by the company in their operations for only a short distance, for which they could not compensate and which might be irreparable. The pavement or street-way that is to be sustained upon iron columns may or may not prove to be sufficient to withstand the shocks and burden of the constant and heavy travel over it. In case this part of the experiment fails, no provision is made for restoring the streets to their present condition, even if this restoration were practicable.

Second. The vaults on Broadway, constructed by private grantees thereof at great expense, and now necessary to their business, are to be taken without compensation, if owners of property on other portions of the route, who have no vaults, and do not require any, shall so decide.

Third. The excavation, under whatever restrictions, would interrupt business and travel on Broadway, the continued free use of which great thoroughfare is important to the commerce of the whole country. No limit is imposed upon the period for which the company may interrupt travel on Broadway. On the other streets the bill provides that travel shall not be interrupted beyond a reasonable time, which would be construed to mean whatever time is necessary for the construction of this work. The printed bill, as originally introduced, forbade the interruption of travel on Broadway as well as the other streets for more than a reasonable time; but the bill was amended in its progress so as to leave out Broadway.

Fourth. The project takes away six feet from the present width of all the sidewalks in Broadway, which are not wide enough now for the convenience of the people. The space so taken on both sides of the streets is to be left open, and connections with the lower sidewalks are to be established at so many points as the company may determine. This open space would be more or less an obstruction to business with every store or other building along the route, to say nothing of the annoyance which would probably result to both the occupants of the buildings and to passers-by from the smoke and exhalations rising through it.

Fifth. In the construction of this work the whole system of sewerage along the route must necessarily be greatly deranged. The lowering of the sewers in and near Broadway would render necessary the lowering of all connecting sewers, entailing an expense difficult to calculate, and a possible damage not to be estimated.

Sixth. The company are permitted to deprive the people along the route of the proposed work, for a period of time on which no limit is placed, except that it shall be reasonable, of the use of gas, water and the sewers, conveniences absolutely essential to their daily comfort. The supply of water necessary to the extinguishment of fires may also be cut off for a time, to the possible loss of property greater in amount than the whole capital of the Arcade Company. It is obvious that the reasonable time named in the bill, for which the company may stop the use of gas and water, would be claimed to mean so long as the work of the company made such stoppage necessary; and it is still more obvious that if the supply of gas and water were once cut off, the people would be, practically, at the mercy of the company in this respect, for a long time without immediate or effectual remedy; while the city government, in all its departments, would be powerless to afford relief, for it is expressly prohibited, by one section of the bill, to permit anything to be done which shall embarrass the operations of the company.

Seventh. The bill proposes to surrender a large portion of the Battery for a surface or open-cut railway.

Eighth. The bill violates private rights of property in prescribing a special rule of estimating damages or compensation when such property is to be taken for the purpose of the company, which special rule, varying from that established in all other cases, is in effect this: that title may be acquired by the company to a valuable lot of ground on Broadway, against the will of the owner, and instead of paying for the same, the company may offset the benefit which, it may claim, will accrue to property on the upper part of Fourth avenue belonging to the same owner, by reason of the increased communications the road will open.

It is claimed that the bill does not establish such a rule. I quote its language: 'In proceedings to ascertain the value of the property taken, &c., the question of benefit shall be considered, and when it shall appear that the construction of said road will enhance the value of the property of the person claiming damages to an amount greater than the amount of injury sustained, &c., the claimant shall not be entitled to recover more than nominal damages.' The enhanced value of the property of the person claiming damages cannot, of course, refer to the property taken, but must of necessity refer to property on some other portion of the road. Notwithstanding this rule of assessment and the great promise held out of facilitating the travel from the upper part of the city, the company is under no obligations to build its road up Fourth avenue at all. It may, if it choose so to do, confine its operations to Broadway between the Battery and Fourteenth street, or to a less distance. The bill provides that failure to construct one portion of the road shall not work a forfeiture of the franchise in respect of any section which may have been commenced.

Ninth. The language used for the protection of the present sidewalks, and elsewhere in the bill, is loose and careless, or else purposely delusive and deceptive.

Tenth. A proper power of supervision is not given to the Commissioners of Public Works, except for the limited portion of the work below Fourteenth street.

Eleventh. The Company is authorized to take possession of all that portion of Broadway which is below Wall street, before one dollar of capital is subscribed; and as the original corporators named in the bill are empowered to assign their privileges at any time to others, they may take possession of this portion of Broadway and break it up, through the agency of irresponsible parties and as a preliminary experiment, and do irreparable injury.

Twelfth. The contract between the State and the company is, by this bill, wholly one-sided. Everything is given to the company; nothing required in return. No guaranty or security is provided that the work shall be completed, so as actually to afford to the public the facilities for travel the whole length of the island, which is the consideration for the grant of their great privileges. The time is, indeed, limited to six years and six months within which to finish their work; but it is also provided that they may construct any small section of it, and leave all the rest undone, and yet their franchise shall not be forfeited as to the small portion they may have chosen to build. They may thus reap high profits from a small and the most valuable portion of the route, and leave the great mass of the public wholly unprovided for.

Thirteenth. The bill authorizes this company to take portions of the Battery, Bowling Green, the City Hall Park, Union Square, Madison Square, and Central Park, which are the property of the city, without compensation. It is claimed that, except in the Battery, no part of the surface of these public grounds is to be taken. An examination of the bill shows that this is not so. The company may take in any of the public parks a space of five hundred feet wide by one hundred in length, for constructing and operating their railway, and for platforms, stairways, station depots and buildings, and for proper communication between the same. In no case is the city to receive any compensation for its property. Having thus attempted to give away city property to a private corporation, the bill, by section 14, in effect, enjoins the authorities of the city from any attempt to defend its property and rights.

The public parks and other property of the city are pledged for the payment of the city debt, and for this and other reasons I deny the right of the Legislature to take any such property and give it to a private corporation, under the plea that being now devoted to one public use, it may be diverted to the purposes of this company, as being for another public use. If it is competent for the Legislature to do so in this instance, then it may, some day, give away to the street railways of New York City, for depots and stables, the City Hall Park, Union and Madison

Squares, and such portions of the Central Park as may be deemed necessary, and this bill, if passed into a law, would be taken as a precedent for so doing. A portion of the Battery was ceded by adjoining owners to the city for the purpose of a public place, and for no other. The city itself cannot convey this portion without a quit-claim from these grantors, and yet this company is authorized to appropriate this property to its own use. The property of the city proposed by this bill to be, practically, confiscated, for the benefit of this company, is estimated to be worth between six and seven millions of dollars; and the application of these public grounds to the purposes proposed would utterly destroy some of them and disfigure all the others.

It is claimed that like privileges with these, as to the public grounds and parks, have already been given to the Central Underground Railroad Company, and that I approved the law granting them. This is not so. The charter of the Underground Company was passed in 1868, before I came into office, and was approved by my predecessor. The only bill relating to the last named company which has been submitted to me, is the act of 1869, amending certain sections of the original act. The section under which it is claimed the Underground Road has had given to it the privileges in and to the public parks proposed to be extended by the bill to the Arcade Company, was not amended, nor referred to in the act of 1869, and so, strictly speaking, was not put before me, for my official approval or disapproval. My attention, in considering the Amending Act, was of course not attracted to any but those sections of the original act which were amended. If, however, it can be justly said that by signing the act of last year, I aided in reviving privileges which had then expired and sanctioned the taking of city property without compensation, then my action was wrong. If I have once committed an error, through mistake or oversight, that is no reason why I should commit another.

I have heretofore refused my assent to a bill giving to a railroad company the partial use of streets in New York, without compensation; it could not be expected that I should sanction a bill which undertakes to grant to a private corporation, as this does, a large and valuable portion of the property of the city, with the express condition that nothing shall be paid to the city treasury in return.

I shall not pause to recite other objections which occur to my mind; those already stated seem to me to be sufficient, and I therefore send the bill to the Secretary of State without approval.''

May 17.

Veto of the following bills:

"An act to incorporate the New York Annuity Company."

'' Bill allows this company to begin business when only $25,000 is paid in out of an authorized capital of $500,000.''

"An act to authorize the election and appointment of an additional justice of the peace in the town of Deer Park."

'' The bill authorizes the appointment by the supervisor and justices. The Constitution requires that justices of the peace shall be elected.''[p]

"An act to enable incorporated rural cemeteries in Oneida county to acquire title to lands where the owner or owners are unwilling to sell, or where the cemetery association and the owners cannot agree upon the value thereof."

''A similar bill, applying to the counties of Jefferson and Cayuga, was returned to the Legislature during its session, with objections.'' *Ante* p. 162.

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[p] Const. 1846, art. 6, § 17.

"An act to authorize the trustees of the Reformed Church of Helderberg, in the town of Guilderland, Albany county, to sell a portion of their lands."

"The general laws of the State provide for a method of authorizing the sale of lands belonging to a church, by application to the courts of law."

"An act to amend section 256 of an act entitled 'An act to simplify and abridge the practice, pleadings and proceedings of the courts of this State."

"The bill is carelessly worded, and may authorize appointments of several stenographers where only one is needed."

May 18.

Veto of the following bills:

"An act to repeal the second section of chapter 564 of the Laws of 1869, entitled 'An act authorizing additional tolls to be collected on plank roads in the county of Albany."

"The second section of the act of May 4, 1869, which the bill seeks to repeal, places the plank road of the Great Western Turnpike Company on an equality, as to rates of toll, with other plank roads of Albany county. This equality should not be disturbed by this special enactment. There is no good reason why the toll rates on all plank roads should not be the same."

"An act to provide for the erection of a public market in the Thirteenth Ward of the city of New York."

"I refused my sanction to a bill of like nature, last year, for the reason that markets built at the public expense have not proved satisfactory, and that the system should not be extended. Private capital will do all that is necessary in this direction." *Ante* p. 93.

"An act to amend an act entitled 'An act for the better protection of minors,' passed April 29, 1869."

"The bill contained some excellent provisions, but there are others which would seriously and unnecessarily inconvenience charitable institutions having charge of minors, and at the same time operate to the prejudice of the minors themselves."

"An act to increase the compensation of the Assessors of the town and village of Malone."

"The provisions of the bill, if proper, should be extended to all the towns and villages of the State."

"An act releasing lands under water to the present owners of the adjoining lands, between the northern boundary of Madison avenue and the northern boundary of South Ferry street in the city of Albany."

"Commissioners of Land Office have full power in the matter."

May 19.

Veto of the following bills:

"An act to incorporate the Security Bank of the city of Brooklyn."

"Bill submitted to Superintendent of Banking Department, and he makes objection to it, as not conforming to the laws of the State in reference to banks."

"An act to provide for the erection of a public hall in the village of Newark."

"The bill designates five persons as commissioners, with power to purchase or lease a site for, and to erect a public hall at an expense of twenty thousand dollars; for which the commissioners may issue bonds on the credit of the village, and the bonds 'shall be signed by the president and clerk of the village, at the request and direction of the commissioners,' the bonds to be paid by tax.

The village authorities are ignored and no consent of the people to the tax is required in the bill."

"An act to amend chapter 454 of the Laws of 1868, entitled 'An act authorizing the construction of a railroad from the end of the Long Wharf on the Hudson River, in the town of Fishkill, Dutchess County, to Matteawan in said town,' passed April 29, 1868."

"Not approved, on account of remonstrance from some of the original incorporators and a large number of residents and property owners at Matteawan."

"An act to incorporate the Oneida River Road, in the town of Schroeppel, in the county of Oswego."

"The bill appoints three persons as special commissioners to improve a certain road at an expense of three thousand dollars. The Supervisors have power now (chap. 855 of the Laws of 1869) 'to provide for the improvement of any public highway laid out in pursuance of law.'

It may be that they must entrust such work to the regularly elected Commissioner or Commissioners of Highways of the town, which is proper. They may authorize the borrowing of money for the purpose by the town, and make the money so borrowed payable a year hence, and so to be a part of the next tax levy. For so ordinary a work it does not seem to me to be proper to supersede the Commissioners of Highways by legislative act."

"An act to incorporate the Fifth Avenue Savings Bank of New York."

"Section sixth authorizes investments in bonds of cities and counties of other States."

May 20.

Veto of the following bills:

"An act to provide for the maintenance and repairs of the several bridges over the Oneida, Oswego and Salmon rivers, in the county of Oswego."

" The bill provides that hereafter the supervisors of the county shall levy one-third of the expense of repairing these bridges on the county at large, and the other two-thirds of such expense, shall be levied upon the towns, ward and city heretofore chargeable therewith, in the same proportion as heretofore.

The bill takes from the supervisors the discretionary power conferred on them by the general laws of the State (chap. 314, laws of 1838) under which they may apportion ' the tax so to be raised for repairing bridges,' among the several towns and wards of their county, as shall seem to them to be equitable and just.'

It is claimed that by special legislation at the time of the construction of one of these bridges, at least, it was made a permanent charge on certain towns named.

This bill does not cure that special legislation, but repeats it in another form. The proper remedy is to repeal the special legislation of former acts, and restore to the supervisors their proper power over the whole subject."

"An act making an appropriation and authorizing a loan on the credit of the county of Wayne, and the levying a tax for paying the same, for the purpose of building a bridge across Great Sodus Bay, in the county of Wayne."

" The bill needs a two-thirds vote, making, as it does, an appropriation for local purposes. It was passed by only a majority vote."[q]

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[q] Const. 1846, art. 1, § 9.

"An act to authorize the Commissioners of Highways of the town of Goshen, in Orange County, to lay out and open a highway through certain lands in said town."

"By chapter 230 of Laws of 1866, the village of Goshen was taken out of the jurisdiction of the Town Commissioners of Highways, and all the powers of a Highway Commissioner were devolved on the Street Commissioner, to be appointed by the village. This bill restores the powers of the Town Commissioners for this one case only, and is, therefore, objectionable as special legislation. Remonstrances are on file against it by parties through whose lands the proposed road would pass."

"An act to incorporate the Eighth Ward Savings Bank, to be located in the city of New York."

"Senate bill No. 452, was submitted to the Superintendent of the Bank Department, in conformity with the law of 1869, and being approved by him, was reported to the Senate by its committee; but on its being recommitted, with power to report complete, this bill was substituted by the committee in place of the original bill. I decline to approve."

"An act to provide for the appraisal and payment of the claim of Patrick Grattan, John Riley, and the heirs-at-law of Edward Murray, deceased, for the construction of three locks upon the Champlain Canal, at Fort Ann, in Washington County."

"This claim should have been referred, not to the appraisers, but to the Canal Board."

"An act to repeal an act, entitled 'An act to amend an act to secure the payment of mechanics, laborers, and persons furnishing materials toward the erection, alteration, or repairing of buildings in the city of New York, passed May 5, 1863,' passed April 21, 1866."

"Bill repeals act of 1866, which gives mechanics and others a lien upon houses to the extent of the right and interest of the owner therein at the time of filing notice of lien. The mover of the bill thinks it is in the interest and for the protection of mechanics to repeal law of 1866. He mistakes, I think, the effect. The law is now well understood, and it is better for all concerned that it should remain undisturbed.''

"An act to incorporate the Farmers' and Mechanics' Savings Bank of the county of Schenectady."

'' The bill was passed without compliance with the general law of 1869. I have, notwithstanding, submitted it to the Superintendent of the Banking Department for examination. He reports that some of its provisions are very objectionable, and, on examination, I concur with him, and decline to give it approval.''

"An act to amend an act entitled 'An act to amend an act entitled An act to authorize the formation of railroad corporations, and to regulate the same, passed April 2, 1850, so as to permit municipal corporations to aid in the construction of railroads,' passed May 18, 1869."

'' This bill passed in the closing hours of the session. One amendment subjects the counties of Albany, Erie, Greene, Seneca, Yates, Onondaga, and Niagara (heretofore excepted) to the operation of the General Town bonding act. The Senator representing Albany and many taxpayers protest against its becoming a law; the bill having been, so far as Albany is concerned, and, perhaps, as to other counties, a surprise, and having passed hastily and without discussion. The papers before me show that the printed bill proposed no amendment affecting the counties named, in which respect it differs from the bill as engrossed; nor is there anything among these papers to show how or when the amendment was made.''

"An act to incorporate the Frontier Gas Light Company of the city of Watertown."

"Watertown has a population of ten thousand or less; it has one gas company already in operation, and there is scarcely any need for this special organization; there are general laws for organizing gas companies."

"An act for the relief of John M. Humphrey."

"The bill provides for reimbursement of money paid for land sold by the State, the title to which proved not to be in the State. The Commissioners of the Land Office have full power in such matters now — see Revised Statutes, part 1, chap. 9, title 5, art. 1, sec. 6."

"An act to fix the valuation of lots 19, 20, and 21, in block 45, in the Third Ward of the City of Oswego."

"The bill provides that certain real estate shall continue on the Assessors' books at the same valuation as that of 1870, for purposes of all taxation, for twenty years to come, provided the buildings thereon shall be used for a hotel. The property is now unimproved, and the object of the bill is to exempt from taxation of any kind, State or local, for a period of twenty years, the improvements that are to be made. To state the provisions of the bill is sufficient to explain why it should not be approved."

"An act to incorporate the Corn Exchange Warehouse Company."

"The bill, in substance, and in fact, in express terms, authorizes the taking of more than the legal rate of interest for advances of money."

"An act to amend an act, entitled 'An act to establish the Pawling and Beekman Turnpike Company,' passed April 3, 1818, by authorizing the partial surrender of a portion of said turnpike."

"The general law (chapter 87, Laws of 1854) authorizes turnpike companies to surrender portions of their roads, provided the portions be at either end, or at both ends of the road, and the surrender have the assent of two-thirds of the stockholders."

"An act authorizing the Otisville and Wurtsboro Turnpike Road Company to establish rates of toll."

"The Board of Supervisors have the power (under chap. 855, Laws of 1869) to increase the rates of toll upon turnpike roads, upon application of the directors. This company was established under the general act (chap. 210, Laws of 1847) which prescribes the rates of toll to be taken by the companies organized under it. The present bill is not one to establish, but to increase rates already established, which may done by the Supervisors."

May 24.

Veto of the following bills:

"I send to the Secretary of State, without approval, three bills to incorporate villages, or to amend their charters, to wit: The three relating to Geneva, in Ontario County; Copenhagen, in Lewis County; and Clyde, in Wayne County.

They contain serious defects. That relating to Geneva provides (title 2, section 2) that 'the police justice shall be nominated by the board of trustees and appointed by the presiding justice (of the Supreme Court) of that judicial department of this State, in which Geneva is.'

In my opinion, this is in conflict with the Constitution (article 10, section 2), which provides that all village officers shall be elected by the electors thereof, or of some division thereof, or appointed by such authorities thereof as the Legislature shall designate. It is claimed that under the new article just engrafted upon the Constitution, a local court of this kind may be established, and the appointment of the judge or justice thereof be placed in such hands as the Legislature may choose. If this argument be correct, there is so much the more reason why I should withhold my approval of the bill, for it is contrary to sound policy, and to established custom of the State, to give to the judges of our courts any such patronage.

That relating to Copenhagen provides (title 5, sections 5 and 6) that when the trustees of the village open a street, the clerk of the village shall ' summon a jury of six freeholders,' who shall award the damages to owners of land taken, and that their award, unless appealed from in twenty days, shall be final and conclusive. Such appeal may be made to a court of record, asking for the appointment of three commissioners to review the decisions; but the appeal cannot be made except on the execution of a bond in the penalty of $250, by the appellant to the village to cover costs. The owner of the land taken cannot be thus deprived of his property. Six freeholders summoned by the village clerk do not constitute a ' jury ' within the meaning of the Constitution, as construed by the courts.[r]

That relating to Clyde provides (title 7, sec. 5) that real estate when sold for non-payment of village taxes, shall be sold not for a term of years, but in fee; and that the surplus, beyond the tax received from the sale of the property, shall be invested by the village authorities on bond and mortgage, and held by them until the former owner of the land claims it; but, when transferred to him, the interest that may have been collected on the mortgage meanwhile shall not be accounted for to him, but such shall belong to the contingent fund of the village. It is unnecessary to comment on this provision.

Abundant evidence is furnished in the special village charters that have been submitted to me this year, that they are not prepared by the Legislature or its committees; they are prepared at home, sent to some member of the Legislature, and passed without any critical or careful examination. In several instances during the session bills of this kind were recalled by the Legislature at my suggestion, in order that certain unconstitutional clauses, or clauses otherwise objectionable, might be stricken out, so that they might obtain my approval.

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[r] Const. 1846, art. 1, § 7. See People ex rel. Eckerson v. Haverstraw (1896), 151 N. Y. 75.

No inconvenience can result to the inhabitants of the villages to which these bills relate by a delay till next year. It is too late now for elections this year under the new charters.

It would be wiser, in my opinion, that all villages should avail themselves of the general act for the incorporation of villages passed this year. A general act of this nature, of course, receives more general and careful examination at the hands of the Legislature. It, no doubt, is yet imperfect in some minor details; but, if found to be so, it is better to amend this general act than to supply the defect in some special charter applicable to only a single village, as is the present practice. Amendments to the general act would, for obvious reasons, be more wisely made than when applicable to a single charter, and the benefit of the amendments would be at once conferred on all villages."

May 25.

Veto of the following bills:

"An act to amend an act entitled 'An act to incorporate the Buffalo and Williamsville McAdam Road Company,' passed May 3, 1836."

" The bill provides for the removal of a toll-gate upon the application of either the company or the Common Council of Buffalo, by order of the County Court or the Superior Court of the city; and also that a certain portion of the road shall cease, thereafter, to belong to the company.

The original charter of the company (chap. 240, of Laws of 1836) says, 'it shall be lawful for the judges of the County Court of the county of Erie to order' any toll-gate 'to be removed,' and thenceforth 'it shall not be lawful' for the company 'to collect tolls' until the gate shall have been removed to the place directed in the order of the court.

This bill is unnecessary, therefore, to the removal of the toll-gate, and the company will, of course, be glad to abandon so much of the road when the tolls can no longer be collected on that part of it."

"An act for the relief of Richard Calrow, Jr."

"Aside from some of the provisions of the bill itself, which are extraordinary and improper, there are good reasons why this claim should not be further investigated.

Claims of Mr. Calrow, under his contract for construction of New York arsenal, were, by chapter 273, Laws of 1859, submitted to and passed upon by a Referee.

By chapter 327, Laws of 1862, the Lieutenant-Governor, Comptroller, and Secretary of State were authorized to examine further his claim for work and materials, under the contract 'or otherwise,' for which the State was legally or equitably bound.

December 30, 1862, they reported unanimously 'that there is nothing due, and that no work has been done or materials furnished, under the contract or otherwise, for which the State is legally or equitably liable beyond what has already been paid.' To authorize a re-examination and award, after a lapse of eight years, no new facts being developed or evidence discovered (as is now admitted to be the case), would establish a precedent indefensible and dangerous."

"An act to incorporate the Mutual Loan and Depositors' Institution of the city of New York."

"The bill authorizes the company, among other things, to do a pawnbroker's business, as well as to loan money upon general personal securities. Under its provisions, the company would claim to the rights charged upon all loans the rates of interest allowed to licensed pawnbrokers in cities.''

"An act to amend an act entitled 'An act in relation to the opening, widening, and extending of streets, avenues, and public places in the city of New York.' "

'' The amendment provides that three-quarters of the whole cost of opening and grading any street running northerly, north-easterly, or north-westerly (north of One Hundred and Fifty-fifth street), and of any park or place north of One Hundred and Fifty-fifth street, shall be assessed upon the city at large, and only one-quarter on the 'property benefited.' There is no justice in such an arbitrary rule of assessment.''

June 1.

Veto of the following bills:

"An act to incorporate the Nassau Savings Bank of the city of Brooklyn."

'' The bill authorizes the trustees to assign their places; and the available fund, so-called, which is to be loaned at discretion, is not limited.''

"An act to alter the map or plan of the city of New York."

'' The counsel to the corporation of New York, to whom I have submitted it, suggests objections to the bill, in which I concur. Among other things, the bill directs the Comptroller of the city to refund certain assessments which may have been paid for opening that part of the street now proposed to be discontinued. The Comptroller cannot do this without an appropriation, so that injustice may be done by discontinuing work for benefit from which parties have already paid their assessments.''

"An act to incorporate the Chemung and Tioga Bridge Company."

"The general laws provide (see chap. 259, Laws of 1848, chap. 372, Laws of 1852, and chap. 120, Laws of 1854) for incorporation of bridge companies, and for construction of bridges by them, with the consent of the Board of Supervisors, who are also authorized to fix the rates of toll."

"An act to confirm the proceedings taken by the Common Council of the city of Buffalo to lay out and extend Genesee street from its termination at Best street through to intersect the Buffalo and Batavia plank road."

"The Common Council have full power in this matter, and cannot need a confirmation of their acts unless they have done something or omitted something contrary to the regulations of law. By new proceedings in conformity with law, they can themselves remedy any existing defects."

June 10.

Veto of the following bill:

"An act to establish a Stock Exchange in the city of New York, and for the government and regulation of the same."

"The bill confers extraordinary and unusual powers, and among other things exempts the proposed corporation from the operation of the usury laws, and the statute of frauds. It is open in other particulars also to very serious objections."

June 18.

Veto of the following bill:

"An act in relation to Insurance Companies, Corporations, Associations and Partnerships doing business in this State, not organized under the laws of this State."

"My decision upon this bill has been delayed until I could receive and consider the written statement of the special committee of the New York Board of Underwriters, and the written argument of the Superintendent of the Insurance Department in support of the bill.

Both of these have now been received, and have been (in connection with the previous oral arguments before me) carefully considered.

Whether the foreign and domestic insurance companies, doing business in this State, are now on terms of just and proper equality under our laws, is not the present question. The question is, whether the law proposed will establish equality, as its advocates urge it will do.

It appears to me very clear that this bill does not establish equality, but discriminates severely against the foreign companies.

In estimating the capital of the Foreign Insurance Companies for the purpose of insurance here under the laws of this State, it includes only:

1. Securities on deposit with the Insurance Department of this State.

2. Securities deposited with the Insurance Departments of other States for the general benefit and security of all policy holders residing in the United States, immediately available for the payment of losses in this State.

3. Investments on bond and mortgage in this State and upon United States securities held in trust for policy holders by trustees in and citizens of this State.

It excludes, therefore, from the estimates, all real estate, if any, which such foreign companies may hold in this country for the purposes of their business, and money invested in the stocks of this State, or in the bonds of the city of New York or other cities of the State; all of which are recognized by the general laws as proper investments for fire insurance companies, and are certainly to be considered investments of the first class in point of security.

It then, while giving the foreign companies no credit for what capital they may have invested abroad, or for any in other States, except deposits with their insurance departments, nevertheless deducts from this limited portion of their capital all liabilities everywhere, whether on their business in this State, in other States, or abroad, including among the liabilities fifty per cent. of all unearned premiums, whether these premiums pertain to their business here or elsewhere.

It may be, and probably is very proper, that all capital not invested in this country should be disregarded; but it is obviously making up a very one-sided account to charge against the capital invested here, and against a limited portion of that, not only the liabilities arising from the business done here but also all the liabilities incurred in the business done abroad, although this latter portion of their business is done on the credit of, and secured by, capital separately invested there. It is easily to be seen that a company of large means, prudently managed, both here and elsewhere, thoroughly solvent and affording great and desirable security to policy holders, might be excluded from doing business here at all, upon this arbitrary and unjust estimate of its actual condition. To illustrate: Suppose a company incorporated in England to have in all $4,000,000 of capital, $2,500,000 of it being invested in England, $1,000,000 invested in this State, and held by trustees residing here for the benefit of holders of policies issued here, and $500,000 deposited in the Insurance Departments of other States. Suppose, then, its liabilities on its business in England to be represented by the sum of $1,000,000; those in this State by the sum of $500,000; those in other States by the sum of $500,000. By the rule of this bill, the total liabilities everywhere, amounting to $2,000,000, are to be charged against that portion of the capital which is invested here, which would exhibit the company as having exhausted all its means; while, in fact, there would be in England alone a surplus of $500,000 above all liabilities everywhere; a clear surplus of $500,000 invested in this

State over all liabilities in this State; a clear surplus in this country of $500,000 over all liabilities in this country, and a total surplus capital, here and in England, of $2,000,000 over all liabilities everywhere.

When, as is provided by this bill, only a limited portion of the capital invested here is to be taken into account, the injustice, and, in fact, inaccuracy of the statement, would be greatly exaggerated.

The only answer suggested to this proposition and illustration is, that the bill does not intend to charge the liabilities abroad which are secured by capital there invested, against the limited portion of the capital held in this State. Reference to the language of the bill satisfies me that it will not bear the liberal interpretation put upon it by the Superintendent of Insurance, applying to it the ordinary rules of interpreting laws. The bill makes no distinction between secured and unsecured liabilities. A liability is none the less an actual liability because secured. The bill declares that the actual losses and liabilities of the company shall be deducted from the limited portions of the capital which it allows to be taken into account. Can it be argued that an obligation of a foreign company to pay a loss abroad, or in other States, is not an 'actual liability,' because the company has assets abroad, or in other States, to secure its payment?

The construction put upon the bill by the Superintendent cannot, therefore, in my judgment, be sustained, and he agrees with me that if it cannot, the bill should not become a law.

I agree with the domestic companies that equality should be established between them and the foreign companies, and there can be no serious difficulty in agreeing upon a bill to that end at the next session of the Legislature.

Against the bill now before me, large numbers of merchants and others interested in effecting insurance on property strongly protest. They say that the aggregate capital of our domestic companies is often inadequate to afford the protection needed by them, and that the capital of the foreign insurance companies brought to this country is absolutely necessary to afford this protection. It is always unwise to do anything which tends to drive capital away from the country, and in my judgment, the domestic companies themselves will be more healthy and prosperous for wholesome competition *on equal terms* with the foreign companies. Severe discrimination against foreign companies for the purpose of giving to our domestic companies special protection, will only give a sickly and temporary strength to the latter at the expense of those who want insurance. Protection to special interests is almost always injustice to the people.

It is better, therefore, to leave it to the next Legislature to establish by a well-considered law the equality which this bill fails to secure, than it would be to sign this bill with the expectation that it should be hereafter amended.''

1871. JANUARY 3. LEGISLATURE, NINETY-FOURTH SESSION.

JOHN T. HOFFMAN, Governor.

ANNUAL MESSAGE.

EXECUTIVE CHAMBER,
ALBANY, *January* 3, 1871.

TO THE LEGISLATURE.— The favorable action of the Legislature, at its last session, upon many important recommendations made by me, has left very few questions of State policy to which it is necessary to call your attention.

General laws have been passed, through which much special legislation will be avoided. The conspiracy laws have been amended. A new revision of the statutes has been ordered. The registry laws (except in the city of New

York) have been repealed. Important changes in canal policy have been made. The examination of numerous claims against the State, heretofore requiring a special act in each case, has been provided for by a single statute. The excise laws have been modified in conformity with the judgment of a majority of the people. A general law for the incorporation of villages has been enacted. The powers of the boards of supervisors of the several counties have been enlarged. Metropolitan and other district commissions, which had absorbed the rightful powers of local governments, have been abolished. The management of their own affairs has been restored to the people of the great cities. The initiatory steps have been taken to secure a more just and satisfactory assessment of property for taxation.

The subjects engrossed, in a great degree, the time of the Legislature at the last session. The disposition then made of them having commanded the popular endorsement, the principles involved may be treated as settled. I am justified, therefore, in the hope that the present legislative session will be much shorter than usual. It will be a relief to the people if the volume of annual legislation be diminished; especially if they see that much of the diminution is due to the defeat of the private schemes which are so frequently thrust upon your consideration.

Although the people of this State are enjoying a fair degree of prosperity, they feel sensibly the heavy burden of taxation, Federal, State, and local, which rests upon them, and which, as heavy taxes always do, lessens their home comforts and interferes with their efforts to improve their condition. They watch closely their representatives, legislative and executive, in the administration of public affairs. They expect retrenchment of expenditures wherever it is possible, and have a right to demand that legislation be confined to its legitimate purpose, to wit, the equal protection of all and the promotion of the general good. They know that all the money drawn from the public treasury is taken out of their earnings; that there is, in fact, no public treasury except in the pockets of the people. Willing to be taxed for the legitimate purposes of government, they are not disposed to be parsimonious in contributing thereto; but waste, extravagance, and taxation for the benefit of private speculative enterprises, will incur their condemnation.

The tendency on the part of both Federal and State Legislatures, for many years past, has been to the making of laws for the benefit of a favored few, protecting and advancing special, at the cost of the general interests. Those who seek such legislative favors are always ready to put forward the specious argument that some public benefit is likely to accrue as a compensation for the private gain assured to themselves; but in too many cases the result is simply that new burdens are imposed on the people. This evil is one of great magnitude. Our government is a government by majorities; but it is a mistake to suppose that the governing power, even when vested in a majority, has the right to impose taxes upon the people at large for purposes of private benefit.

It is time to return, both in Federal and State affairs, to a full appreciation of the principle of justice to all, upon which our government is founded. Our country has passed through the struggles and trials of a great civil strife, and our people are rapidly forgetting the causes which engendered it, and the griefs and sorrows it produced. While the nations of Europe are convulsed by war, or stand in dread of it, a merciful Providence blesses us with peace. Gratitude to God, as well as our interest, demands that we shall cultivate, all through the land, the spirit of magnanimity, charity and patriotism; then, if wisdom shall inspire our counsels, we may easily throw off the burden which folly and evil passions have put upon us, and enter upon a new career of public and private prosperity.

TAXES.

The rate of State taxation this year is about seven and one-fourth mills. Nearly one-third of the tax is for the annual payment of our war bounty debt, required by the act creating it. Besides this, one mill was necessary to provide for obligations incurred and claims audited in former years, but for payment of which the Legislature then omitted to make appropriations. It was not a question of discretion, but a matter of State honor, that these claims, heretofore examined and audited by the proper officers, should be paid at once. They ought to have been paid before. This item will not appear another year. Five-eighths of a mill are levied to meet payments for work on the new Capitol. The two last mentioned items amount to about one-fourth of the whole State tax.

The new Capitol was begun under a former administration; it is for the people, through their representatives, to say how rapidly the work shall go on. It is manifest that the cost of this work will very far exceed the original estimates, and the limit imposed by law; to this I deem it my duty to call your especial attention. The act conferring authority on the commissioners to erect a new Capitol (chapter 830 of Laws of 1868) explicitly provided "that they shall not proceed to the construction of the said new Capitol unless they shall be satisfied that the expense thereof shall not exceed, when completed, four millions of dollars." The sum of one million six hundred and three thousand seven hundred and fifty dollars and fifty-three cents ($1,603,750.53), independent of six hundred and forty-seven thousand five hundred and sixty-five dollars and sixteen cents paid for land) has already been expended in the construction of the building; and the foundation only is completed. It is due to the commissioners to say that before they commenced the work they had estimates from skilled men which came within the limit of four millions of dollars; they claim also that the work above the foundation will be, proportionately, less expensive. It is nevertheless evident that the cost of the building when completed, will be very greatly in excess of the first estimate.

It is for you to provide a remedy for this very unsatisfactory state of things. If the whole work is to go on, perhaps the plans might be so modified that a building of much simpler and less costly style could be erected on the present foundation, and yet all the accommodation needed by the State government be afforded. Nor do I see why, with the abundant space occupied, part of the proposed Capitol building should not be appropriated to an Executive residence; this would be a saving to the State. If, on the other hand, the work is to be stopped or suspended for a time, this can be done with less loss and inconvenience now than at any future period in the progress of construction. A new Capitol is, unquestionably, needed; but, unless the plans can be so modified as to insure that the cost will be very much less than it now promises to be, and not much in excess of the original limit, I recommend that the work be suspended, at least, until our war bounty debt, which requires about three millions of dollars of annual taxation, be paid.[1]

STATE DEBT.

The greater portion of the State debt consists of the war bounty debt, which will be extinguished within seven years through the annual taxes imposed by the act which created it. The unpaid portion of this debt amounted, on the 30th of September, 1870, to nineteen million five hundred and eleven thousand three hundred and ninety dollars and forty-two cents ($19,511,390.42.)

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[1] The supply bill, chapter 715, appropriated $650,000 for continuing the construction of the new Capitol. The act appointed Hamilton Harris, William C. Kingsley, William A. Rice, Chauncey M. Depew, Delos DeWolf, and Edwin A. Merritt capitol commissioners in place of the existing board. Resident mechanics and laborers were to be preferred provided their employment did not increase the cost of the building.

The residue of the State debt, amounting to twelve million eight hundred and ninety-seven thousand seven hundred and fifty-three dollars and eighty-four cents ($12,897,753.84), was in existence before the war, and was incurred in gold; it is to be satisfied, not from taxation, but out of the revenues pledged for its payment. No part of the principal will come due this year, and you will merely have to provide for the payment of the interest in coin, in accordance with the policy which the State adopted last year. The entire State debt was, on the 30th of September, 1870, after deducting the unapplied portions of the several sinking funds, thirty-two millions four hundred and nine thousand one hundred and forty-four dollars and twenty-six cents ($32,409,144.26) a reduction of six million four hundred and fifty-five thousand three hundred and four dollars and forty-eight cents ($6,455,304.48) having been effected during the past two years.

Salt Springs.

The quantity of salt inspected from the Onondaga Salt Springs during the last fiscal year, was eight million eight hundred and fifty-one thousand two hundred and forty-seven bushels (8,851,247). This shows an increase of production, compared with the previous year, of three hundred and sixteen thousand five hundred and eighteen bushels (316,518).

Revenue for the year, eighty-eight thousand five hundred and ninety-nine dollars and ninety-seven cents	$88,599.97
Expenses, fifty-four thousand six hundred and eighty-eight dollars and ninety cents	54,688.90
Net revenue to State, thirty-three thousand nine hundred and eleven dollars and seven cents	$33,911.07

BANKS.

On the 1st of October last, sixty-one banks were doing business under the laws of this State; of which number twenty-seven have been organized under the provisions of chapter 475, laws of 1867, or converted from National into State banks under that law. Thirty banks in all have been converted or organized as new banks from National banks into State banks. Three of these are closed; one in consequence of failure, after an existence of less than one year.

During the last fiscal year circulating notes to the amount of $288,925 have been burned by the Bank Department, and eight banks have been credited with lost circulation to the amount of $123,227, the time for redeeming it having expired.

On the 1st of October last the amount of circulation outstanding, charged to banking associations, individual and incorporated banks, was $2,253,937.50. Of this, the amount of $779,297.50 consists of notes of incorporated banks in existence prior to the passage of our free banking laws, and for which no securities were required; and the sum of $1,474,640 is secured by deposits of bonds and mortgages, stocks and cash.

The total amount of securities held by the Superintendent of the Banking Department, at the close of the fiscal year, was $2,671,288.63; of which $525,378.98 was held for trust companies, and the balance $2,145,909.65 for banks, most of them being banks of circulation.

One hundred and thirty-three savings banks, with total estimated assets of $220,000,000, are now doing business in the State. The number of persons having deposits, as represented by the number of open accounts on the 1st of January, 1870, was 651,474, against 588,556 the previous year. The total amount of interest credited to depositors during the year ending January 1, 1870, exceeded ten and a quarter millions of dollars. In the same period of time, the assets of these banks were increased by the sum of twenty-six millions of dollars, and more.

In view of the magnitude of the interests involved in our savings banks, I renew my recommendation that full authority be conferred on the Superintendent of the Banking Department to examine their affairs, and to apply proper remedies for mismanagement.[2]

INSURANCE.

The number of insurance companies, subject to the supervision of the Insurance Department, on the first day of December, 1870, is 275, as follows:

New York joint stock fire insurance companies...	105
New York mutual insurance companies...........	10
New York marine insurance companies............	9
New York life insurance companies................	43
Fire insurance companies of other States...........	67
Marine insurance companies of other States........	2
Life insurance companies of other States...........	30
Casualty insurance companies of other States.......	3
Foreign insurance companies.	6
Total.	275

The total amount of stocks and mortgages held by the Department for the protection of policy holders of life and casualty insurance companies of this State, and of foreign insurance companies doing business within it, is $7,412,567, as follows:

For protection of policy holders generally, in life insurance companies of this State.	$4,462,917.00
For protection of registered policy holders, exclusively...........................	1,559,650.00

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[2] The Governor's suggestion as to additional power to be vested in the superintendent of the Banking Department relative to examinations of savings banks was embodied in chapter 693, passed April 25.

For protection of casualty policy holders, exclusively	$26,000.00
For protection of fire policy holders in foreign insurance companies	1,048,000.00
For protection of life policy holders in foreign insurance companies.	316,000.00
Total deposit.	$7,412,567.00

STATE PRISONS.

The Comptroller's report will show, in detail, the earnings and expenses of the State prisons during the past year. The discipline in these institutions has been, on the whole, better than heretofore. Nevertheless, there is great need of further improvement in their management, financially and otherwise. As I said in my last message, greater concentration of responsibility is required; and this can, probably, be attained only by an amendment of the Constitution.[a] I renew my recommendation that greater discretionary power be conferred on the chief officer of each prison in the matter of punishment.

Under the authority of chapter 427 of the Laws of 1870, I appointed as Building Commissioners for the erection of the State prison or Industrial Reformatory established at Elmira, in Chemung county, Amos Pilsbury, of Albany, Charles C. B. Walker of Corning, Abram H. Miller, of Oswego, and Stephen T. Arnot and Frank H. Atkinson of Elmira.

These commissioners have visited the most important of the buildings recently erected for similar purposes in the eastern States; and Mr. Pilsbury, by their authority and on their behalf, has examined all newly constructed prisons in Ohio, Illinois and other western States. They have perfected the title of the State to the lands selected by a former commission for the site, and will be prepared to begin the construction of the building early in the coming spring, if the necessary appropriations be made by the Legislature.[3]

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[a] Const. 1846, art. 5, § 4; see am. 1876.

The commission appointed by me, in pursuance of your concurrent resolution, to examine the subject of convict labor, consists of E. C. Wines, and Thomas Fencer of New York, and Michael S. Myers of Auburn. A report from them may be expected during the present session.[4]

I visited, during the past year, as I did the year before, all the State prisons, and gave a hearing to every convict who desired to apply personally to me for pardon or commutation of punishment. More than a thousand applications for pardon and commutation of punishment have been presented to me, by the convict in person, or by written petition. Eighty-five pardons, thirty-four commutations, and one reprieve have been granted; a detailed statement whereof, and of my reasons in each case, will be hereafter submitted.[5]

CHARITIES AND ASYLUMS.

I respectfully refer you to the report of the Commissioners of Charities for information upon the condition of the various State charities, all of which are recommended to your favorable and careful consideration. In some of the counties great improvements have been made in the management of the poor houses. The pressing claims of the insane poor for better care than can possibly be given them elsewhere than at asylums especially provided for their form of human suffering, I again urge upon your attention. You will be called upon to make appropriations for enlarging the accommodations in the State asylums for such of the insane as have no means of support. I trust, you will do whatever is needed to hasten the time when all of this class may be removed from the county poor houses. I recommend, also, to you an inquiry into the condition of pauper children in the several counties, and whether some provision ought not to be made for removing them to proper asylums.[6]

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[3] The Supply bill, chapter 715, appropriated $200,000 for the Elmira Reformatory, $4,000 to be used in paying the balance of the purchase price of the land.

[4] The report of the prison labor commission, bearing date January 27, 1871, was presented in the Assembly on the 30th. See Document No. 18. The report, among other things, recommended the constitutional amendment relative to prison administration which had been adopted by the Convention of 1867. The report also recommended the abolition of the contract labor system, and the elimination of political control from the government of State prisons. The commission recommended that no legislation be had as to penitentiaries and reformatories not under State control.

[5] See special message of February 3, transmittting the report of pardons, etc.

EDUCATION.

The general operations of the Department of Public Instruction during the fiscal year, ending September 30, 1870, are shown by the following statistics:

Total receipts from all sources, including balance on hand at the beginning of the year	$10,919,466.45
Total expenditures	9,929,462.92
Amount paid for teachers' wages	6,501,173.37
Amount paid for school houses, repairs and furniture	1,980,546.70
The estimated value of school houses and sites	20,417,329.00

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[6] By chapter 713, passed April 25, the State Board of Charities on the application of the Superintendents of the Poor, might exempt a county from the provision of the existing law requiring chronic insane to be sent to the Willard Asylum on satisfactory proof that the county possessed buildings and facilities adequate for the proper care of such persons. The same act provided that if satisfied that suitable provision was not made for the care of chronic insane in county poor houses, the State Board of Charities might direct the removal of such persons to the Willard Asylum.

Number of children attending the public schools.	1,029,955
Number of persons attending the normal schools.	4,734
Total number of school houses..................	11,705

The money which we cheerfully pay for the purposes of general education is well and carefully applied, and the extent to which the opportunities afforded are made use of, proves how highly the people appreciate our common schools. I am sure, the Legislature needs no recommendation from me to extend to our school system the most liberal encouragement.

STATE MILITIA.

The State militia, organized under the name of "The National Guard of the State of New York," numbers now over twenty thousand officers, non-commissioned officers and privates. For details I respectfully refer you to the Report of the Adjutant General. The Military Code, adopted at the last session, has been received with approval by officers and men alike. I consider it of great importance that the State military organization should be generously sustained by the Legislature. To make it thoroughly efficient, it should be armed with breech-loaders of the best quality and most approved pattern, and I recommend a suitable appropriation for that purpose.[7] A further settlement of over six hundred thousand dollars ($600,000) of the war claims of this State upon the general government, has been effected this year.

QUARANTINE.

The experience of the past year has furnished additional evidence of the security afforded to the public health by the proper administration of quarantine laws. Out of 365 vessels which arrived in the port of New York from ports infected with yellow fever, 107 had had cases of this disease on board, either in the port of departure or on their passage, or were found on their arrival here to have some of their crew or passengers sick with it.

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[7] The general appropriation act, chapter 718, authorized the Governor to expend $250,000 in altering the small arms of the National Guard, or exchanging them for breech-loaders.

The total number of cases on these vessels, as nearly as could be ascertained, was 470, out of which 112 died. Twenty-six cases from vessels under quarantine were admitted to the West Bank Hospital, only six of which proved fatal. In addition to these, eighty-three patients, prostrated with yellow fever, were admitted to the hospital from among the troops on Governor's Island, thirty-one of whom died. Thirty vessels have been detained at quarantine on account of smallpox, having an aggregate of over 18,000 persons on board, from among whom sixty-six patients, sick with this disease, were sent to the hospital on Blackwell's Island. Ten vessels have arrived, having ship-fever on board, with an aggregate of nearly 6,000 passengers, twenty-two of whom died with the disease on the passage, and forty others, sick with it on their arrival, were transferred to the Ward's Island Hospital.

These statistics of disease show the dangers to which we are exposed through our foreign commerce. Happily, they have been so warded off, that, notwithstanding the intense heat of the past summer, the general health has not been disturbed by them. It is reasonable to assume that this result is, in a great measure, due to the vigilance and fidelity of the quarantine authorities, and to the increased facilities afforded them by the West Bank Hospital for the care and treatment of patients. This is the first year that it has been in full operation, and the success which has attended its workings has fully met the expectations of the public and demonstrated the wisdom of its erection. It is claimed, however, that until a suitable place for the detention of those who, while not actually sick, have been exposed to disease by passage in an infected vessel, and until warehouses for the storage of infected goods are provided, it will be difficult to protect the public fully against the dangers of imported disease. A structure on West Bank for the former purpose has been commenced, but an additional appropriation will be required to complete it.[8]

IMMIGRATION.

The number of emigrants arriving at the port of New York this year is 212,000, a loss as compared with last year of 47,000; the number of arrivals this year being about the same as in 1868.

We may reasonably expect that, with the return of peace in Europe, emigration thence to this country will be very largely increased.

REVISION OF STATUTES.

I appointed, under chapter 33, of the laws of 1870, Amasa J. Parker of Albany, Nelson J. Waterbury and Montgomery H. Throop of New York, Commissioners, to revise, simplify, arrange and consolidate all statutes of the State of New York. The work is being prosecuted with diligence.

TAX REVISION.

Under the authority of the joint resolution of the Legislature passed at its last session, I appointed David A. Wells, George W. Cuyler and Edwin Dodge Commissioners, to revise the laws for the assessment and collection of taxes. Their report will be submitted at an early period of the present session.[9]

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[8] The completion of the West Bank quarantine buildings was provided for by an appropriation in the supply bill, chapter 715, of $200,000 for various quarantine purposes.

[9] See special message of February 16, transmitting the tax revision commission's report, which appears as Assembly Document No. 39. The supply bill, chap. 715, made an appropriation for the compensation and expenses of the commissioners, and directing them to report a "tax code or law" at the next session of the Legislature.

CANALS.

I hold to the same opinions, concerning our canals, as were expressed in my annual messages of 1869 and 1870.

The magnitude of our internal commerce is far beyond that of our foreign trade. Our canals are a necessary means of facilitating this great domestic traffic, and their maintenance in good navigable condition is essential to the general welfare of the people of this State. Our Constitution, from obvious considerations of public policy, has provided that these works shall always remain the property of and be under the management of the State;[b] and the suggestion to surrender them to the control, in any degree, of the Federal government, deserves no consideration. The Federal government has already enough of administrative duties. This State built these canals without any extrinsic aid; it owns them, and is quite competent to take care of them. Our own people are directly interested in their good management, and these great works are much more likely to be well administered by ourselves, than if put under so remote a supervision as that of the Government at Washington.

The Canal Board, by authority of the Legislature, adopted last year a reduced scale of tolls. As was anticipated, there has resulted a diminution of revenue, as compared with the previous season. As compared with a period of years, however, the falling off is not serious. The average annual receipts of the canals from the year 1846 down to 1869 inclusive (the period of high tolls) is very little in excess of those of 1870; and this includes the exceptional period of the war, when the receipts were unusually large. The falling off last year is not all due to the low rate of tolls. From purely commercial causes, there has been a diminished traffic. The business of the canals, moreover, suffered, during the past summer, from a great reduction of railroad rates of freight temporarily made by rival companies in a struggle for the Western trade.

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[b] Const. 1846, art. 7, § 6.

Whether this diminution of revenue is to be temporary or permanent, the interest of our people requires that whatever changes in the toll sheet the experience of the past year may suggest, we should adhere as far as possible, to low tolls. We produce in this State not more than six million (6,000,000) bushels of wheat in a year. We consume, every year, twenty-one million (21,000,000) bushels. One-half of the total quantity of other grains consumed in this State, to wit, Indian corn, oats, rye and barley, are also supplied from other States. It is obvious that cheap transportation from the grain producing States is essential to our comfort and prosperity. To say nothing of the importance of having cheap means of forwarding to the West our own manufactures and the merchandise imported from abroad, our people gain much more by lowering the rates of transportation on the supplies they must procure from other States than they lose in reduced revenue from low tolls. When we built our great canals the people of this State produced all the food necessary for their consumption and had a surplus to sell. If in a spirit of far-seeing and liberal enterprise it was wise then to construct these works for general benefit to the internal commerce of the country, how much more essential is it now, for our own interests as well as theirs, that we keep up the freest intercourse with our western brethren. Nature has favored us in the great lakes upon our borders, and in the unequaled outlet to the sea afforded by the Hudson river; our people have united these by the construction of great artificial water-ways; the interests of the State and of its people seem to me to be irrevocably bound up now with the preservation, in full efficiency, of the connecting channels so established. The people of Europe and of Canada are projecting canals on a grand scale; our government is expending large sums of money in clearing away obstructions in the Hudson and other navigable rivers; an inference that our canals are no longer useful because of the railroads opened to the West, is as unwarranted as it would be to suppose that the free navigation of the Hudson River is no longer important, now that a railroad is built upon its banks. We ought not to levy a greater toll upon the commerce of the canals than is absolutely necessary to their maintenance, and the gradual payment of that portion of our debt to which their revenues are pledged.

Except in the canals, our people have no efficient check upon the rates of freight which the railroads may impose. The consequences of natural rivalry among the roads themselves are avoided by combinations and agreements on their part for establishing uniform rates; and in view of the fact that this State does not produce probably one-quarter of the food which its people consume, while it may be said to furnish none of the coal we use, it is vitally important to us that the great connections of the lakes with the Hudson should be maintained, with the least possible tax upon the traffic which they were established to promote. It should be borne in mind that the canals were not constructed with a view to create a revenue for our State treasury. They must be kept up in their efficiency out of regard not only to the interests of the people of our own State, but to the great mutual good which, by means of the freest trade between us, we and the people of other States are capable of conferring on each other.

A part of the policy of the past year has been to put the canals in thorough order. They had been neglected for many years, and their obstructed and dilapidated condition rendered very heavy expenditures necessary. Another year the revenue will, probably, be larger; the expenditures, certainly, much less. The round trip from Buffalo to Albany and back has averaged four days less the past season than the previous year. The canals are in much better order than heretofore; their capacity for business increased; the necessity for repairs diminished.

There is great need of the application of steam power to propelling or towing of boats on the canals; and I recommend that you make a suitable appropriation of money to enable the Canal Board or the State Engineer to test, by actual experiment, the merits of several projected methods.[10]

GENERAL RECOMMENDATIONS.

The lamented death of one of your number, the Honorable Isaiah Blood, of the Fifteenth District, has left a vacancy in the Senate, which owing to imperfection in the Statutes, cannot be filled. It will be your duty to supply this defect[11]

I have twice recommended to the Legislature (without effect) a modification or amendment of the laws relating to murder. There are many instances of homicide where the criminal intent to take life is proved, in which, however, the jury are unwilling to find a verdict of guilty of murder in the first degree, because, in their judgment, the circumstances do not justify the death penalty. Under judicial construction of the existing statutes, they cannot bring the case within the definition of murder in the second degree, or of manslaughter in either the first or second degree. They have no alternative but to render a verdict of absolute acquittal, or of guilty of manslaughter in the third or fourth degree, notwithstanding they feel that the punishment which the law will, in the latter cases, award, is wholly inadequate. I recommend that either the maximum punishment for manslaughter in the third degree be made much greater, or that in all cases where the degree of premeditation does not, or the circumstances attending the homicide do not, in the judgment of the jury, justify punishment by death, they may render a verdict of guilty of murder in the second degree, to be punished by imprisonment for life or for a term of years, in the discretion of the court.

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[10] The Legislature in March adopted a concurrent resolution requesting the Canal Board to reduce the rates of toll upon apples, potatoes and all esculent roots to one mill per thousand pounds per mile, being the rate imposed until the toll sheet of 1852.

The Legislature made the usual appropriations for the maintenance of the canals and for payments on the canal debt, and by chapter 868, approved April 28, provided for experiments in the use of steam, caloric, electricity or any motor power other than animals for the propulsion of boats. Chapter 911, approved May 10, authorized the introduction of the American system of cable towage on the canals.

[11] In 1872, (chapter 698) provision was made for filling vacancies in the office of senator and member of assembly. This subject is now included in section 4 of the General Election Law of 1896, chapter 909.

The only objection that is likely to be urged against this recommendation is, that, if it were adopted, the jury would have too great a discretion in the matter of enforcing the death penalty. The answer to this objection is, that they exercise that discretion now, and will, in any event, continue to exercise it, when they think it right so to do; but in doing so, as the law now stands, they render a verdict which does not satisfy themselves or the demands of justice.

I recommend, also, the passage of an act which will put an end to the great injustice of detaining as prisoners, persons who are unfortunate enough to be witnesses to the commission of crime, and unable to give security for their appearance at the trial of the accused. The magnitude of wrong and suffering resulting from this practice, especially in cities, is not, I am sure, appreciated or understood, or it would not be permitted to continue. The law should provide that no person shall be detained in prison as a witness in criminal cases beyond a specified time, and that, if the trial be postponed beyond that time on the motion of the prisoner, it shall be only on condition of his consenting that the testimony of the witness may be taken *de bene esse,* as in civil cases. It may be urged that the people may not be ready to bring on the trial, and may thus, in some cases, lose the benefit of the testimony of the witnesses altogether. I answer that it is better so than to have innocent persons suffer imprisonment, in order that even the guilty may be convicted.

I recommend, anew, that power be conferred upon the Oyer and Terminer, or upon the Supreme Court, to grant new trials in cases of conviction by the Oyer and Terminer. The Courts of Sessions, which are inferior tribunals to the Oyer and Terminer, have this power, under existing laws, in cases of conviction before them. They are authorized to grant new trials upon the merits, or for irregularity, or on the ground of newly discovered evidence. It is obviously proper that the higher criminal courts should possess the same power. As the matter stands now, a person wrongfully convicted in the Oyer and Terminer, no matter how clearly his innocence may be shown by evidence discovered after conviction, has no remedy except in a pardon from the Executive. This is not the proper and just rectification of the wrong done to him by an unjust conviction.

I recommend an amendment to the General Village Law (chap. 291 of the Laws of 1870), so as to authorize the election of a police justice in villages having sufficient population to justify it.[12]

There is a great and constantly increasing demand for some means of rapid transit from the lower to the upper part of New York Island. This demand must be met. To most of the plans hitherto suggested there have been serious objections, on account of the nature of the work proposed, or the privileges asked for by those who offered to undertake it. To a bill passed by the last Legislature authorizing what was called the Arcade Railroad, I was obliged to refuse my signature, after the adjournment, for reasons already given to the public. The objections to the provisions of this bill were insuperable. Heretofore, a charter was granted for the construction of an underground railway; but thus far, sufficient capital to prosecute the work has not been subscribed. It is claimed by persons who have given the question careful consideration, that the true solution of the difficulties which surround it, is to be found in the construction of an elevated railroad, upon a solid structure, raised so high as to cross the transverse streets by arches that would offer no obstruction to ordinary travel, and avoiding interference with the leading avenues, by passing chiefly through the middle of blocks. It would seem, that, under a properly guarded bill, less inconvenience to the public in their use of the ordinary streets, and less interference with private rights of property would ensue from this method than from any other, while the convenience to passengers would be greater than on roads below the surface. There are those who have always stood in opposition to every plan heretofore presented, and who ought to be ready to suggest some method of relief, or give their assent and their aid to any plan which, while free from the objections urged against the rejected methods, holds out a reasonable prospect of success.[13]

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[12] The Legislature responded to the suggestion as to village police justices, by enacting chapter 688, approved April 25, 1871, amending the General Village Law of 1870, by providing for the election of police justices for terms of four years in villages containing a population of three thousand or more. This subject was afterwards included in the Revised Village Law of 1897, chap. 414.

The powers of the Commission for preventing the spread of the disease among cattle, known as the rinderpest, will expire, by limitation of law, on the twentieth of April, this year. The necessity for the vigilance exercised by the Commissioners still exists, and very serious consequences would, in my judgment, result from an intermission of the important duties devolved on them. The Commission has always been embarrassed by the omission of the Legislature to make the necessary and very limited appropriations required by them. I trust that you will provide all the means needed for a service so valuable and essential to our stock raisers and farmers, and will continue the act in force. Certain amendments will be suggested by the Commissioners, to which I ask your careful attention.

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[13] See veto of Arcade railway bill, 1870, May 16, *ante*, p. 197, Chap. 300, passed April 5, 1871, incorporated the New York Railway Company, "for the purpose of providing rapid transit through the city and county of New York and Westchester county, and to provide for the construction and operation of railways therefor." The act authorized and directed the city of New York to take $5,000,000 of the company's stock, but by supplemental act, chapter 808, approved April 28, the city was prohibited from acting under this power until other parties had taken $1,000,000 of the stock, and had paid in at least 10% of the par value thereof.

I call your attention to article 8, section 1 of the Constitution providing that "Corporations shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the Legislature, the objects of the corporation cannot be attained under general laws." Of late years, there has been a disposition to overlook the strict intent of this limitation upon legislative power.

I suggest to you the importance of passing all bills making large appropriations of money, including the New York tax levies, at a period of the session early enough to enable me to return them with objections, if I have any to make. The practice of allowing these bills to be delayed until the end of the session deprives me, in fact, of my constitutional right to disapprove of objectionable items, unless by withholding my signature from a bill, I permit desirable and proper appropriations for the year to be lost. It is not right to leave me no alternative but to sign bills containing objectionable items, or to refuse my signature, and thus defeat appropriations which are necessary.

FEDERAL AFFAIRS.

The disposition of the Federal administration to unnecessary, unwise and unconstitutional interference with the pursuits and rights of the citizen and with the State governments continues and is a great evil. By the prolonged disfranchisement of a portion of the people of the South, and by other means, the full and final restoration to them of political rights, of the control of their own affairs, and of the free choice of their representatives, is still, for partisan ends, delayed and obstructed, to the prejudice of good government and of the general welfare.

TARIFF.

We are made to endure the evils of an oppressive and ill-regulated tariff of duties, and have no immediate prospect of substantial relief. The principle of special protection is at war with the general sentiment of the world; and to this it must, sooner or later, yield, although its advocates, who, during the last ten years, have secured more than ten revisions of the tariff, all tending to higher and higher protection, still manage to control Congress and its committees.

We are the only great power which commands extended coasts on both oceans, and are a maritime people by inheritance from almost every stock that contributes to our mixed blood, yet we have become within a few years, by the suicidal operation of our own laws, destitute of shipping. Not only have we been driven from the ocean, but, on our great lakes, Canadian-built vessels are gradually drawing trade away from us, because, costing much less, they can accept lower rates of freight. Ship-building, in which, a few years ago, we excelled the world, has become a lost art among us. Our agriculturists, who, under this system of favoritism, miscalled protection, realize no increased price for what they raise and want to sell, are, nevertheless, compelled to pay an enhanced price for what they need and have to buy. Blankets, woolen clothes, and many other things of common use are dearer in this country than in any other, to the injury of those whose lot it is to work very hard for their comforts, which class constitutes the great bulk of every people. These are only some of the evil results from the Federal Government legislating for the benefit of a few capitalists, under the false pretence of protecting our home labor. The enormous profits resulting from this unjust favoritism go all to the manufacturing and mining capitalist; not to the men employed by him. The high duties laid for so-called protection, do not enure to the benefit of the public treasury, nor do they make the general condition of the laborer, whether in or out of factories, better. Even the protected capitalists are beginning to share in the effects of the general derangement and languor in business generated by this false system, which undertakes to sustain certain favored persons in occupations in which, if left to their own skill and resources, they would, by their own admissions, fail.

There is no sufficient remedy for this except in the absolute rejection from our Federal legislation of the principle of favoritism. All the people are entitled to equal protection; none have a right to special favors; and it is a wrong which, it seems to me, ought to shock the moral sense of every one, for a government, under the pretext of raising revenue, to tax the whole people in order that a few men may do a profitable business. It is, moreover, demonstrated by experience, that high duties and a complex system of taxes laid on many articles (the larger number of which contribute little to the revenue), while they make necessary the maintenance, out of the revenues, and consequently at the cost of additional public burdens, of many more government officers than would be required by a simpler method, render frauds more profitable and easier of accomplishment, and lead to an increased amount of private and official corruption. Piecemeal amendments to the tariff are of little value. What we need is, that a rebuke shall come up from the people, so strong that it cannot be overlooked or forgotten, of the practice of imposing taxes for any purpose, save the one of procuring necessary revenue for the public treasury. No compromise should be made on this question; nothing accepted by the people short of the establishment of a tariff, as moderate as the necessities of the Government will permit, applied to as few articles as will yield the required amount, and adjusted strictly to its only lawful purpose, that of raising revenue.

FEDERAL FINANCES.

The administration of the Federal finances exhibits no improvement. Taxes are still levied to an amount greatly in excess of the needs of the Government; and the excess is applied to the payment, in advance, of Government bonds which we are not obliged to pay for many years to come. Part of these taxes are levied through the custom houses, to the extent of two hundred million dollars ($200,000,000) a year, payable in coin, although the quantity of gold required by the Government to meet the annual interest on the public debt is less than one hundred and twenty million dollars ($120,000,000).

The surplus of coin, or much of it, is, from time to time, sold in Wall Street, for the purpose (as is claimed) of keeping down the premium on gold, when, considering the magnitude of the Federal revenues, there ought not to be, and, if the Federal finances were wisely managed, there would not be, any premium.

Notwithstanding the reduction of the premium on gold in the past year, it is admitted on all hands, by the Government officers as well as by others, that we have made no real progress toward specie payments. Nor have we any guaranty that the premium on gold will not rise again; we can have none except in the Government growing stronger in the actual means of redeeming its circulating paper.

The Federal treasury has had in circulation, for many years, promissory notes of its own, payable on demand, to the amount of four hundred million dollars ($400,000,000).

These notes, made a lawful tender for debts, constitute now the money habitually used by banks and the people in all transactions. These promises the treasury does not redeem; and this non-redemption, and nothing else, makes the present condition of things, which is known as a suspension of specie payments. If the Federal treasury were redeeming its notes in coin, the notes would be worth as much as gold; in other words, the money now used by banks and the people, would then be the same as gold; and such a condition of things would be, of itself, without any further arrangements, a full and complete return to specie payments. All that is necessary to establish such a condition is that the Federal treasury make itself ready to redeem its own notes, and nothing will be required to maintain that same sound condition but that the Federal treasury shall continue to redeem the notes. The banks are not responsible for the present suspension; they have no duties in respect to it; they are helpless to put an end to it; they pay their own debts now in the lawful money of the country; that lawful money consists of government notes, which the government alone can make worth as much as specie. That once done, banks and people, while continuing to pay their debts in this same kind of money, would be dealing, in all transactions, on the specie basis.

There would be no shock to business in a transition so effected. No contraction of the currency, and, consequently, no stringency in the money market, need precede it. No demand for the actual possession of coin, among the people, would follow it; for, manifesting, as they do now, great confidence in the legal tender notes, they would have still more faith in them when it was established that the notes command coin at the treasury, on demand; and they would, for convenience, prefer the notes to gold itself. Anything that the Government shall do in order to promote a return to specie payments, except this one thing, the making of its own notes worth as much as gold, will be not only needless but mischievous. No new regulations for the banks are necessary to this end; and needless regulations always do harm. The banks paid their debts in legal tender notes year before last, when the notes were worth seventy-five cents to the dollar in gold; they have continued to pay, during the past year, in the same notes when worth ninety cents; they will, with the same ease, pay in legal tender notes, they being equally abundant, when they are worth one hundred cents; and that will be paying specie.

The Treasury might easily have put itself in a condition to pay its legal tender notes on demand, long before this. From April 1, 1865 (the close of the war) down to the 1st July, 1870, the Federal treasury has received, through its custom houses, an aggregate of nine hundred and twenty-four million dollars ($924,000,000) in gold coin. If it had laid aside only one dollar in five of these receipts, for the purpose of redeeming its legal tender notes, it would have now in its vaults, one hundred and eighty million dollars ($180,000,000) of coin, absolutely belonging to itself, exclusive of what is retained from time to time, to meet accruing interest, and exclusive, also, of private deposits.

The whole amount of legal tender notes outstanding (including fractional currency, and making no allowance for what is lost) is three hundred and ninety-five million dollars ($395,000,000). The fund on hand for the redemption of notes would be now, if one dollar in five had been saved, nearly one-half of the amount of notes in circulation; a proportion much larger than a private bank in good credit finds it necessary to keep on hand to meet its circulation. The superior credit of the Federal Treasury would, of course, maintain its notes at par with gold on a much less reserve of coin than would be required by a private banking incorporation. I cannot doubt that the Government notes would rise to par with gold and be kept there, with a fund of coin, devoted to their redemption, not exceeding one-fourth the amount of notes outstanding.

Under this policy we would have resumed specie payments, naturally and easily, more than two years ago; and it could have been pursued without inconvenience to the treasury. For, ever since the war, both the aggregate surplus revenue of the Government and its surplus of gold revenue have been so great that it could have well afforded to put aside one dollar in five of its coin receipts. It could have been pursued without inconvenience to private business; for our mines were producing more gold than the treasury would have laid aside. The only commercial effect of the proposed process, would have been to make certain the retention in the country of so much coin that might otherwise go abroad; and that result, all men agree, is a proper and valuable means to convenient and permanent resumption.

Under this policy, the Government could now resume specie payments in less than a year's time. The Treasury had, on the 1st of December last, forty million dollars ($40,000,000) of coin of its own on hand. Its gold income is now nearly two hundred million dollars ($200,000,000) a year, of which less than one hundred and twenty million dollars ($120,000,000) is required to pay interest. If the Treasury would simply reverse its policy of selling gold, less than a year would give it a fund of one hundred million dollars ($100,000,000) of coin against its circulating notes. The continuance of large sales of gold during the past season, when commercial causes have been operating, powerfully, to keep down the premium, was especially unnecessary and wasteful. The Treasury may save either the whole of its surplus gold income, or one-half of it, or one-quarter. The result would be equally certain in any of these cases; it would simply be postponed in proportion as the process of saving was made rapid or slow.

There would be no longer any speculation in gold after it was known that the Treasury had adopted a policy leading, inevitably, to an early resumption. No one would buy, except for immediate use, an article which was sure soon to be worth no premium. If, however, it be deemed wise that the Treasury hold part of its surplus gold revenue for the purpose of checking, by the sale of it at times, possible speculation, let it do so, but let it retain another portion, absolutely and sacredly, for the great purpose of resumption.

Our path to the restoration of a sound currency is, in my judgment, so simple, plain, and direct, that I cannot help regarding the financial course of the Federal government as lacking the common sense which is every day applied by men to private business. No private debtor would be regarded as wise (scarcely honest) who, having in circulation a large amount of notes payable on demand, and having at the same time an income in gold, far in excess of any other demands, on him, should neglect to apply his surplus income to the purpose of redeeming his notes. It would not be received as an excuse that he preferred to pay in advance certain obligations, not maturing for many years.

It is obvious that specie payments are not to be restored, so long as the legal tender notes are in existence, except by making these notes and gold equal in current value. This can only be done by making the proportion of coin in the Treasury to its outstanding notes such that the Treasury may safely undertake to redeem the notes on demand. Such proportion may be established either by contracting the quantity of the notes in circulation, or by increasing the quantity of coin in the Treasury. Contraction in the quantity of the notes was tried by Secretary McCulloch; but the process was so distressing to the business of the country, that, after a few months, he was compelled, by public outcry, to abandon it. Contraction of this legal tender money, however gradual, will be found, if tried again, to be a painful remedy. As the notes become scarcer and scarcer, debtors will find it less and less easy to procure the money they need. Banks will find it less easy to keep on hand a proper reserve, and will be compelled to press their debtors. The confidence of creditors in their debtors, including the confidence of depositors in the banks, will be continually growing less with the growing scarcity of money. Capital will withdraw itself more and more from active enterprises; and labor, consequently, will find employment with constantly increasing difficulty. That these would be the results of a persistent contraction is proved, by experience, in instances where combinations of speculators have succeeded in locking up, temporarily, a small quantity of the legal tender notes.

Is it not obvious that it would be wise economy for the Federal Treasury to get back, as soon as possible, to paying its debts in coin? For then, with its credit perfected, the negotiation of loans at very low rates of interest, which it is anxious to effect, would be practicable. Is it not equally obvious that a return to specie payments, if brought about by a wise method, would result in great good to the people? For the industry and business of the country, once rid of the embarrassment and lack of confidence arising from the use of a currency of shifting value, would take a fresh start on a career of active, stable and well-assured prosperity. We must, sooner or later, return to the use of gold and silver; until we do, we shall continue to be subject to frequent and discouraging fluctuations in values, of which we may not yet have seen the worst.

The people naturally shrink from the harsh remedy of contraction. They look upon it as one which threatens, perhaps, greater evils than those which they now suffer. It is unjustifiable to resort to it, when another method will accomplish the result.[14]

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[14] The Legislature on the 28th of February, adopted a concurrent resolution recommending the repeal of the Federal income tax.

FEDERAL INTERFERENCE IN ELECTIONS.

Since the adjournment of the Legislature, the Federal government has assumed to interfere directly, by its officers and armed forces, with elections in this State. The pretext was fear that the right of suffrage would, in some way, be denied to the class of persons upon whom it had been conferred by the fifteenth amendment to the Constitution of the United States. It was a mere pretext; for our State Legislature, at its last session, promptly altered our election laws to conform with that amendment, so soon as it was declared adopted. Moreover, this class of voters had exercised their new right freely and without the least molestation, at our State election, which took place in May last.

Congress, nevertheless, enacted a law for the ostensible purpose of supervising the election of congressmen only; and the President was authorized to employ the army and navy to enforce certain of its provisions. Under color of this act, the President and other United States officials claimed the right to supervise the entire election, not only for representatives in Congress, but for State and local officers. In the city of New York special preparations were made to enforce this claim. A large number of United States deputy marshals and supervisors were appointed, many of whom were men of well known disreputable character, and some of whom had been convicted criminals; a class of dangerous men never before chosen by any ruling authority, in any community, as conservators of the peace. They were instructed, under advice of the Attorney General of the United States, to submit to no interference from any quarter, under State or municipal authority. Orders were issued which authorized them, in the discretion of each one of them, to arrest at the polls citizens claiming the right to vote, as well as the inspectors who were charged by law with the custody of the ballot boxes. These arrests were to be effected without process of law issued upon formal complaints. The peaceful conduct of the election and the good order of the city were thus made to depend on the discretion of these hastily selected, inexperienced, and undisciplined men, some of them habituated to felonious violations of law, and all of them unused to the exercise of delicate and important trusts of power; all having been appointed in one political interest, and having a common partisan purpose to subserve. The police and civil authorities of the city and State, whose duty it is to preserve order, were ignored, under instructions from Washington, as completely as if the people of the State were in rebellion against the government of the United States. It was a bold attempt on the part of the Federal government to assume absolute control of the State and local elections in order to accomplish partisan ends; and officials, both judicial and executive, seemed determined to prosecute it without any regard to the rights either of the local officers or of the people.

The law of Congress under which he was acting required the Federal judge to appoint one-half of the whole number of supervisors from each political party; yet, he deliberately refused to appoint any of the political organization which he well knew represented the great majority of voters in the city. Every popular right was ostentatiously denied, as if the purpose was to irritate and excite the people and to provoke tumult, which might result in breaking up the election and depriving the city of its vote.

The President well knew that the people intended no forcible resistance to the law. Their determination was to meet it, simply and exclusively, by the force of public opinion. It must have been apparent to every mind that the interest of the great majority in the city was to have a quiet and orderly election. It could be the interest only of the minority to promote an outbreak. The President knew also that even if disorder, of any degree, should ensue, the whole civil and police power of the State, sustained by its National Guard (a military organization of our own citizens, composed of men of all classes and all political parties, and maintained by the State to do service, as occasion may demand, for the State or the United States, and which has never yet failed in its duty to either), was both ready and able to preserve order, and to protect all officers of the law in the execution of judicial process and the discharge of official duty.

Notwithstanding all this, by the President's orders, United States troops were brought from distant posts and quartered in the city of New York, and ships of war were anchored in its harbor. It was certainly not unreasonable to expect that the first drop of citizens' blood shed in the city of New York by Federal troops, in time of peace, might lead to terrible results, involving great loss of life and incalculable destruction of property. Therefore, as chief magistrate of this State, charged with the duty of enforcing its laws and preserving order within its boundaries, I used every exertion and made every preparation and provision in my power to preserve order and protect the people in their rights, their lives and property. At the last moment, that is to say, the afternoon immediately before the election, the officers of the United States, fortunately and wisely, abandoned the extreme ground they had taken, and entered into a stipulation with the local authorities of New York city, in my presence, which resulted in preventing any armed interference by troops, either of the United States or of the State.

Nevertheless, it is well known that about two thousand deputy United States marshals were appointed in the city of New York, who were, each one of them, armed with what is known as a navy revolver, worn in belts bearing the designation of the Federal armories. They did not, it is true, form any portion of the regular force of the army or navy; they were undisciplined and without a military commander; but they were men armed by the United States government and paid out of its Treasury, and were stationed, thus armed, at the election polls, having been taught that they were the superiors of the lawfully appointed peace officers of the State, upon whom the preservation of order in a large city depends.

It was due to the patient forbearance of the people, and to the earnest endeavors and great coolness and discretion of the peace officers of the city, that order was preserved.

I deem it my solemn duty to protest now formally against these outrages, which, it is given out, will be renewed at future elections, with preparations looking to a greater degree of intimidation and coercion. In this protest the people of this State do, I am confident, by an overwhelming majority, earnestly unite. They are not to be misled by the pretense that military force is necessary to prevent fraud. For they well know, that all history proves, that military elections are never honest nor free; that military force at elections has always been used by ambitious rulers to hinder a full and fair expression of popular sentiment; in fact, to perpetrate and cover fraud, not to prevent it. If elections are not honest, they should be made so by the force of public opinion and by law; military force asserts its supremacy over both, and is itself a fraudulent and final overthrow of a free ballot.

No State is, or ever was, more devoted than New York to the Union and to the Federal government; none more submissive to that government's constitutional authority; none more ready to defend its rights and vindicate its power; but our Union is a Union of States; the elements of its great strength are the home governments of the people. To weaken the parts is to endanger the whole.

Half a century ago, when Federal officers were accused of interfering with State elections, not by armed forces but simply by exerting an influence through the distribution of patronage, De Witt Clinton, then Governor of this State, addressed the Legislature as follows:

"As a member of the American confederacy, it is not only our duty, but our interest, to sustain the respectability and to promote the authority of the national government, by a patriotic and enlightened exercise of our suffrages, and by contributing all our energies to establish a wise and public spirited administration. But in attending to measures so important, we ought not to overlook the duties which we owe to ourselves. Our government is complex in its organization, and it is essentially necessary to preserve the State governments in their purity and energy. A free government could never exist in a country so extensive as the United States without a judicious combination of the Federal and representative principles. The apprehensions which some of our wisest statesmen entertained, at the formation of the Constitution, that the State governments would constantly encroach on the powers of the national government, appear not to have been realized. The practical tendency has been in the opposite direction. The power of the general administration has increased with the extension of its patronage. And if the officers under its appointment shall see fit, as an organized and disciplined corps, to interfere in the State elections, I trust there will be found a becoming disposition in the people to resist these alarming attempts upon the purity and independence of their local governments; for, whenever the pillars which support the edifice of the general government are undermined and prostrated, the whole fabric of national freedom and prosperity will be crushed in ruin. I have considered it my solemn duty to protest against these unwarrantable intrusions of extraneous influence, and I hope that the national legislature will not be regardless of its duty on this occasion."*

These words, more applicable now than then, are so forcible and eloquent that I quote them, in the hope that they may impress themselves upon the minds and upon the hearts of the whole people.

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* See Governor Clinton's regular message November, 1820, *ante*, Vol. 2, p. 1041, and note 4.

To depend, for the peace and order of localities, on the Federal army is not self-government; to substitute the regular soldier with his musket as a peace officer, in place of the constable with his writ, is not to preserve the peace but to establish the condition of war; to surrender elections to the control of the President, supported by armed forces, is to surrender liberty and to abandon a republic.

JOHN T. HOFFMAN.

SPECIAL MESSAGES.

January 4. To the Assembly: Transmitting the annual report of the Adjutant General.

January 12. To the Assembly: Transmitting the annual report of the commissioners appointed for the purpose of preventing the spread of disease in cattle.

January 12 and 13. To the Assembly and Senate respectively:

"EXECUTIVE CHAMBER,
ALBANY, *January* 10, 1871.

"At a convention of judges, held in this city on the 20th day of December last, for the purpose of revising the rules of the courts of record, a series of resolutions, of which a copy is enclosed herewith, was passed. They relate to the admission of attorneys and counselors to practice;[15] to regulations concerning money paid into court; to alterations in the mode of appointing the time, place and number of General Terms of the Supreme Court,[16] and to the appointment of a reporter of the decisions of that court.[17]

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[15] The resolution adopted by the judges recommended the repeal of all existing statutes relating to the admission of attorneys, and that this subject be committed to the justices of the Supreme Court with power to enact rules for the admission of attorneys. Instead of adopting this recommendation, the Legislature enacted chapter 486, on the 13th of April, vesting in the Court of Appeals power to make rules for the admission of attorneys. Candidates were to be examined by the General Term justices of the Supreme Court, or by a committee appointed by them. Acting under this statute the Court of Appeals made rules relative to the admission of attorneys which took effect on the 1st of June, 1871.

I respectfully ask for these resolutions the prompt and earnest attention of the Legislature, as being due alike to the importance of the subjects to which they relate and to the high source from which they emanate.

JOHN T. HOFFMAN."

January 13. To the Assembly: Transmitting the annual report of the Lenox Library, the report of a majority of the commissioners appointed to revise and simplify the statutes of the State, and a communication from the prison discipline committee of the New York Prison Association.

January 17. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *January* 17, 1871.

"I respectfully transmit herewith a communication made to me by the trustees of the Antietam National Cemetery.

It represents that 926 New York soldiers are buried there; that the original estimate of the cost of the cemetery and monument proposed to be erected, was about $80,000; that according to the apportionment of the charter, the share of the expense assessed to this State, was $17,281, of which $10,000 has been paid; and it asks that an appropriation of $7,281 may now be made by the Legislature to pay the balance of the assessment and complete the work. I respectfully ask the attention of the Legislature to the communication.[18]

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[16] The Legislature adopted in substance the suggestion of the judges on this subject of General Terms, and by chapter 766, approved April 27, authorizes the justices of the General Term to fix the times and places of holding terms of that court.

[17] The appointment of a reporter of the Supreme Court was provided for by an act passed in 1875, chapter 131, which authorized such appointment by the General Term justices. The reporter was to hold office for five years.

JOHN T. HOFFMAN."

January 23. To the Senate:

Veto of a bill entitled "An act to authorize School District No. 4, of the town of Castleton, in the county of Richmond, to borrow money for the purpose of completing a school building in said district, and to provide for the payment thereof."

"By section one of the bill, the trustees of the school district named, are authorized to execute and deliver a mortgage upon the whole or any part of the property of the district to secure the payment of bonds issued by them under authority of the proposed act.

The bond being made by the bill a charge on the taxable property of the district, the further security of a mortgage ought to be unnecessary.

From a mortgage upon the school-house and the land upon which it is built, might result at some time a transfer of the title to some private owner, and a consequent suspension of the operation of the school.

I have no doubt, that on consideration, the Legislature will concur in my opinion, that this provision of the bill is neither wise nor proper.

Whether there be, in former legislation, precedents for this provision of the bill or not, the policy of mortgaging their school property is one which the people of this State ought not to pursue, and one which they will not, I am sure, on deliberate examination of the question, be willing to sanction."

The bill was not passed over the veto.

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[18] The amount, $7,281, suggested by the Governor for the Antietam National Cemetery, was appropriated by chapter 138, passed March 20, 1871.

January 23. To the Assembly: Transmitting the report of the delegates appointed to attend the Convention at Indianapolis for the purpose of discussing topics connected with the emigration from Europe. Also transmitting the annual report of the Board of Commissioners of Pilots.

January 26. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *January* 26, 1871.

"Intelligent and fair minded men of all parties agree that one of the greatest evils of the times, connected with elections, is the corrupt use of money to influence the votes of electors. All laws and measures which aim at establishing purity in elections will fail in their purpose if they fall short of reaching this one great evil. Registry laws, no matter how stringent, do not prove effective. No power can guard the ballot-boxes to any purpose if the men whose constitutional privilege it is to vote, are to be influenced in the exercise of that privilege by the corrupt use of money. In all countries the purchase and sale of offices, civil or military, is prolific of evil. In a Republic like ours, the purchase and sale of voters and of votes endangers the whole organization and structure of the government. It cannot be disputed that all through the State nominations to office, Federal and State, are often bestowed upon men for the reason, and for the only reason, that they will indulge in lavish expenditure of money to secure success. Money, not merit, secures nominations and controls results. It is a fact too general and too apparent to be denied that large amounts are expended by candidates for office at every election for other than lawful and honest election expenses; that they are directly applied to the purchase of corrupting and debauching the electors, and very often to the almost open purchase of votes. This pernicious and dangerous practice is not peculiar to cities and villages; it pervades the whole State. Scarcely a neighborhood is exempt from it. It is practiced with entire impunity, because, under the existing Constitution and laws, the wrongdoers know very well they cannot be convicted or punished. We shall never have pure elections till we strike at the root of the evil. Public opinion cannot be concentrated with sufficient force against the wrong to correct it. What is absolutely necessary is that some men who seek their own advancement by corrupting their fellows should be convicted and punished as criminals. It is far more important to punish the man who tempts and corrupts, than him who, being tempted, yields and falls.

Under our present Constitution, laws may be passed excluding from the right of suffrage persons who may be convicted of bribery, larceny, or of any infamous crime, and for depriving persons who may make wagers upon the result of any election, of the right of voting at such election.[c] And this is all that can be done under existing provisions. The Constitution needs to be amended in this respect. Resolutions proposing amendments passed the Senate and Assembly in 1853, but failed to receive the assent of the Legislature chosen at the next election of Senators.

These resolutions were as follows:

"IN ASSEMBLY, *April* 1, 1853.

"Resolutions proposing an amendment to the Constitution:

"*Resolved* (if the Senate concur), That section two of article two of the Constitution of this State be amended by inserting therein, immediately after the word 'election,' where it first occurs in said section, as follows: 'or who shall pay, give or receive, or promise to pay or give any money or other property or valuable consideration, with intent to influence any elector in giving his vote, or to deter any elector from voting,' also by adding at the end of said section as follows: 'or from holding any office voted for at such election. Laws may also be passed for determining in a summary manner, at the polls, any question affecting the right of any person to vote thereat,' so that said section two, as amended, shall read as follows:

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[c] Const. 1846, art. 2, § 2.

"Laws may be passed excluding from the right of suffrage all persons who have been or may be convicted of bribery or larceny or of any infamous crime, and for depriving every person who shall make or become directly or indirectly interested in any bet or wager depending upon the result of any election, or who shall pay, give or receive, or promise to pay or give money or other property, or valuable consideration with intent to influence any elector in giving his vote, or to deter any elector from voting, from the right to vote at such election, or from holding any office voted for at such election. Laws may also be passed determining in a summary manner, at the polls, any question affecting the right of any person to vote at such election.

"*Resolved* (if the Senate concur), That said amendment to said section two, be referred to the Legislature to be chosen at the next general election of Senators, and that pursuant to section one of article thirteen of the Constitution, it be published for three months previous to the time of such election."

I respectfully recommend the adoption of these resolutions by the present Legislature, with such modifications, if any, as to them may seem proper, so that the next Legislature (a new Senate being chosen next November) may act upon them, and, as I trust they will do, concur in them and send them for approval to the people.[19]

JOHN T. HOFFMAN."

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[19] The Legislature adopted the following concurrent resolution proposing a constitutional amendment relative to bribery at elections.

ARTICLE 2. SECTION 2.

"Laws may be passed excluding from the right of suffrage all persons who have been or may be convicted of bribery or larceny, or of any infamous crime, and for depriving every person who shall make or become directly or indirectly interested in any bet or wager depending upon the result of any election, or who shall pay, give or receive, or promise to pay or give money or other property, or valuable consideration, with intent to influence any elector in giving his vote, or to deter any elector from voting, from the right to vote at such election, or from holding any office voted for at such election."

January 31. To the Senate: Transmitting the annual report of the Cooper Union for the Advancement of Science and Art.

February 2. To the Assembly:

Veto of a bill entitled "An act to authorize the clerk of Monroe county to appoint assistant and special deputy county clerks."

" The general laws of the State provide for the appointment by every county clerk, of one deputy, who in the absence of the clerk, may discharge all the duties of his principal, except that of deciding on the sufficiency of the security given by public officers, and who, in case of a vacancy in the office, is empowered to perform the duties until the vacancy be filled. The Constitution provides that the county clerks shall be clerks of the Supreme Court;[d] and the general laws authorize every county clerk to appoint a special deputy, who shall possess the same power and authority as the clerk ' to attend and do all things in and about the courts.'

The clerk of Monroe county is already authorized by a special law (chapter 750, Laws of 1859), to appoint one assistant deputy, who may perform all duties appertaining to the office, whenever the clerk and deputy shall be absent from the office, except that of deciding upon the sufficiency of the security given by public officers.

The bill now under consideration authorizes him to appoint a further number of assistant deputies, not to exceed three, making in all four assistant deputies, all having equal authority to perform the duties of the office in the absence of the clerk and deputy. It also empowers him to appoint two special deputies (in addition, of course, to the one authorized by the general law) to attend to business in the courts.

It is usual for every important officer to be allowed one deputy, and no more, who shall, in his absence, take his place so far as to prevent interruption to the business of the office. A deputy comptroller, a deputy secretary of State, a deputy attorney general, &c., are provided, each authorized to act for his principal in his absence. The general policy of the law seems to be that some one person, and no more, shall be ready to act for the principal officer in case of his absence; and no further provision is deemed necessary or proper in the case of offices of greater importance than that of county clerk.

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[d] Const. 1846, art. 6, § 20, Am. 1869.

It is difficult to see the necessity for, or the propriety of giving to the county clerk of Monroe county, as this bill proposes, the exceptional and extraordinary power of appointing five deputies, all clothed with power to act in his stead in the general business of his office, while the clerks of counties of much larger population, and with consequently a greater amount of business, have a less number.

The four assistant deputies (one under the general law, and three under this bill), are all to be clothed with equal power to act, in the absence of the clerk and deputy; and no method is provided whereby to ascertain which one of the four is, in such contingency, to be regarded as chief of the office.

It may be that some reasons can be urged for increasing the number of special deputies to attend the courts. If so, these reasons would apply with more force to the counties of greater population than Monroe. To a special law, applicable to only one county, providing for a large increase of deputy county clerks, with the full powers proposed by the bill, the objections are to me so manifest, that I am constrained to withhold my signature, not doubting that on reconsideration the Legislature will agree with me.

It appears from the petition and papers submitted to me with the bill, and from the statement, in conversation with me, of the clerk of Monroe county himself, that the relief which he thinks necessary, is simply that of having the persons who attend the courts, in his stead, clothed with the power of deputies in that branch of his business. If it be deemed necessary that all persons designated by county clerks to attend the courts in their behalf, should be appointed special deputies for such business, it would be better to enact a law to meet this need, making it applicable to all the counties in the State, so that any county, in which an additional force of deputy clerks for this purpose is required, may avail itself of it. The necessity for such a provision must be equally great in New York, Kings, Erie, Albany, and perhaps some other counties as in Monroe."[20]

February 3. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *February* 3, 1871.

"The Constitution requires that the Governor 'shall annually communicate to the Legislature, each case of reprieve, commutation or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve.'[*]

I have considered, during the past year, more than 1,000 applications for pardon and commutation, made to me either by the convict in person, when I visited the prisons, or by written petition; eighty-five pardons, thirty-four commutations, and one reprieve have been granted.

I send a statement of the pardons, reprieves, and commutations granted, with the particulars required by the Constitution, and, although under no obligation to do so, I have thought proper, for the information of the Legislature and the people, to give, in addition, the reasons which induce me, in each case, to relieve the convict from the penalties of the law.

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[20] The Monroe county court clerks bill was not passed over the veto, but another bill was passed and became a law, chapter 710, on the 25th of April, and which authorized the appointment of additional court clerks in counties containing a population of 100,000.

[*] Const. 1846, art. 4, § 5.

JOHN T. HOFFMAN."

February 16. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *February* 16, 1871.

"A joint resolution was passed by the Legislature, at its last session, authorizing me to appoint three commissioners 'to revise the laws for the assessment and collection of taxes.' I appointed David A. Wells, Edwin Dodge and George W. Cuyler; and I now transmit their report. This report was not completed in time to allow such an examination of it, on my part, as would enable me to form an opinion of the expediency of adopting the recommendations made. It is apparent, however, that the report contains a great amount of information, and of argument, which will afford most valuable aid to the Legislature and the people in coming to an intelligent judgment upon the questions involved. No subject is more important than this one to the interests of the people, and consequently none is more worthy of your attention.

The tax system prevalent in the other States is, in its main features, the same as in our own; and the information furnished in this report will be very valuable, not only to the people of our own State, but to the country at large. It is right that New York, the State foremost in population and wealth, should take the lead in investigating this great question, and in adopting such improvements as are shown to be valuable.

The interests of the people require a method of taxation at once equitable, effective and free from unnecessary oppression; one which will yield the requisite revenue, while subjecting them as little as possible to inquisitorial vexation, and which shall be attended with the least expense for official services, and afford the fewest temptations to fraud, concealment or evasion.

If the commissioners have succeeded in devising such a system, it should be adopted as early as possible. In view of the importance of the subject to the general welfare, I earnestly commend the report to your immediate and careful consideration.

Unless otherwise instructed by the Legislature, the commissioners will deem themselves authorized to go on and complete their work, by preparing and submitting such laws as they think necessary to the carrying out of their views.

JOHN T. HOFFMAN."

February 16. To the Assembly:

Veto of a bill entitled "An act to change the name of the Methodist Episcopal Church at Tompkinsville, Staten Island, to 'The Kingsley Methodist Episcopal Church of Edgewater, Staten Island.'"

"Chapter 323 of the Laws of 1853 authorizes any religious corporation to obtain a change of its name in the same manner as is provided by the general act to authorize persons to change their names, namely, by petition to some one of the judges of a court of record therein named. Chapter 322 of the Laws of 1870 also authorizes all corporations and incorporated societies to change their names by applying to the courts.

There is no necessity, therefore, for this special bill, and I feel it to be my duty to withhold my approval."

The bill was not passed over the veto.

February 28. To the Assembly:

Veto of a bill entitled "An act to incorporate the Granite Lake Company."

"This is a local bill, the subject of which, as required by the Constitution, should be stated in its title. The subject is not only not stated in the title, but it is not even indicated; nor is the location of the company stated.[f]

It is entitled 'An act to incorporate the Granite Lake Company.' The object, as declared by its provisions, is to incorporate a water company to supply the village, and the people, of Saratoga Springs with water, and, for this purpose, to acquire title to private property by the exercise of the right of eminent domain, and to build dams, reservoirs and aqueducts. The purpose of the constitutional requirement is well understood, and the result of a noncompliance with it in this instance is, that the village authorities, and others in Saratoga Springs, had not, as they now aver, any knowledge of the provisions of the bill until after its passage, there being nothing to indicate its character in the title as published in the record of proceedings of the Legislature. Having learned its object, they strongly remonstrate against the approval of the bill.

A second objection to this bill is that the provisions relating to the appraisal of damages are, in some particulars, unusual and unwise. The tenth section provides that, on appeal, any court of record in the district may reverse an award of the commissioners, if the proceedings are 'irregular or erroneous or the award unsatisfactory,' but it declares, also, that the court shall confirm the same if such proceedings 'are regular,' and it is further provided that the second award, when made, *shall be final.* That cannot be reversed, no matter how irregular or erroneous or unsatisfactory it may be.*

The third objection is, that by the act of 1868, as amended in 1869 and 1870, the village of Saratoga Springs was authorized to issue one hundred thousand dollars of bonds for the purpose of constructing the necessary water-works to supply the village with water, and water commissioners were appointed to take charge of the construction of the work. Upon the faith of these legislative enactments, the work has been commenced, and is partially completed. Contracts, to the amount of ninety thousand dollars, have been entered into, about sixty thousand dollars have been expended, and four miles of mains have been laid. One hundred thousand dollars of the village bonds have been issued, and a part thereof negotiated. It is now alleged that the organization of a private corporation such as is contemplated by this bill, in opposition to the public work now in progress, is not only not demanded by any public interest, but would tend to embarrass, to some extent, the further negotiation of the village bonds. For these considerations, the president and board of trustees of the village of Saratoga Springs, and the commissioners now engaged in constructing water works, at the expense of the village, remonstrate against the bill becoming a law. They declare that they had no knowledge of it until after its passage, and had no opportunity, therefore, to oppose it before it reached the Executive. They had no reason to suppose that a bill entitled simply 'An act to incorporate the Granite Lake Company,' was in effect, an act to incorporate a company to supply Saratoga Springs with water.

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[f] Const. 1846, art. 3, § 16.

* As to the review of awards, see Re De Camp (1896), 151 N. Y. 557.

These objections, thus briefly stated, are, to my mind, so conclusive, that I feel it my duty to withhold my approval. It seems clear to me that the Legislature, having authorized the construction of the public works at the expense of the village corporation, ought not (so much progress having been made and so much expense having been incurred) to charter a private corporation with powers such as are conferred by this bill, against the remonstrances of the authorities of the village, who are presumed at least to represent the wishes of its people."

The bill was not passed over the veto.

February 28. To the Assembly:

Veto of a bill entitled "An act authorizing the Board of Supervisors of Orleans county to build a lock-up at Medina in the county of Orleans."

" The bill, as originally introduced in the Assembly, provided for the selection of a site, and the erection thereon, of a county building, by the board of supervisors, for the purposes of the county, and at an expense to the county not to exceed $3,000. It was an unnecessary bill, because the supervisors had already full powers, under the general law (chapter 194, of the Laws of 1849), to do all it authorized. It was amended in the Senate, and as amended, passed by the Assembly, (the original title remaining the same), so as to authorize the county board to select the site and construct the building at the expense, not of the whole county, but of such of the towns as they should deem proper to tax therefor; when completed, to be used as a place of detention for any prisoners committed for trial by any magistrate of the county, and to be the property of the towns contributing thereto, a majority of whom may appoint a keeper for the same.

The bill, therefore, provided for the erection of a building, which is neither a county nor a town building, but one to be owned in common by several towns, to be used as a sort of county prison, and to be in charge of a keeper, who is neither a county officer nor a town officer. As to how a majority of the towns are to make the appointment of the keeper; how he is to be paid; how the building, when completed, is to be maintained and supported as a prison or place of detention; and how or in what proportion, taxes are to be levied and collected, for any of these purposes, the bill is entirely silent.

It is usual and proper to provide for the erection of necessary county, town and village buildings, to be the property of the respective corporations and under their control;

but an association of several of the towns within a county, for purposes such as are contemplated by this bill, cannot, I think, be authorized, and is, I am confident, without precedent in the State."

The bill was not passed over the veto.

March 7. To the Senate:

Veto of a bill entitled "An act to amend chapter 909 of the Laws of 1869, being an act to amend an act entitled 'An act to amend and consolidate the several acts relating to the preservation of moose, wild deer, birds, and fresh water fish,' passed May 9, 1868, passed May 18, 1869."

"The bill returned was introduced in and passed the Senate on the first instant, and the Assembly on the second instant, and was not printed before passage. It amends section 25, of the act of 1869, by inserting 'April' in the place of 'March.'

The sportsmen of the State and of other States, and the people generally, are deeply interested in the protection and preservation of game, and in the maintenance and enforcement of well considered game laws, and I respectfully submit, that, when such laws have, after careful consideration, been enacted, they should not be altered in any material point without a full opportunity for examination and discussion.

The act of 1869, which was carefully prepared, makes it unlawful, among other things, to kill or have in possession pinnated grouse, commonly called prairie chickens, between February 1st and July 1st; ruffed grouse, commonly called partridge, between January 1st and September 1st; venison from the 10th of January to the middle of August; and Virginia partridge, commonly called quail, from the 1st of January to the 20th of October, under certain prescribed penalties.

By way of protection, however, to those whose possession is in good faith by purchase, without intent to violate law, it was declared by section 25 of the act, that the persons having such possession might be relieved from the penalties, by proving that the game was imported from beyond the United States, or was killed prior to the prohibited periods, or outside of the limits of the State and within the United States, provided the law of such place did not prohibit the killing, ' except that any person having possession of prairie chickens, partridges, fresh venison or quail, after the 1st day of March, and between that day and the time when they can be lawfully killed, shall be liable for the penalties,' &c. This provision, therefore, in effect, secured to all persons, one to two months time, after the ' prohibited periods,' in which, any could dispose of all stock on hand if lawfully acquired.

By the amendment, herewith returned, it is proposed to extend the time from March 1st to April 1st. The reason which has been stated to me (and no other is assigned) is, that some dealers have now, after March 1st, unexpectedly, and, as is alleged, in good faith, a large stock of game on hand, and they desire to be relieved from the penalties.

The bill does not give the proper and usual protection to those, who in good faith, and from public considerations, had already instituted suits for penalties, and is on that account objectionable, but, even if it did, I respectfully submit that the reason assigned for its passage is not sufficient to justify the proposed change.

The tendency, if not the necessary result of the amendment, would be to defeat the whole object and policy of the game laws of this State and of other States. If the reason assigned is deemed sufficient this year to warrant an extension of the time to the 1st of April, it would be equally good another year for extension to the 1st of May, and so from month to month thereafter.

I respectfully ask of the Senate a full consideration of these objections, which I trust will be received with favor."

The bill was not passed over the veto.

March 7. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *March* 7, 1871.

"I respectfully transmit, herewith, a memorial addressed to me by the Chamber of Commerce of the city of New York (with an accompanying resolution) relating to canals.

The memorial suggests a proposed amendment to the State Constitution, and I ask for it the consideration which its importance demands.[21]

JOHN T. HOFFMAN."

March 9. To the Senate:

Veto of a bill entitled "An act to authorize the town of Deerpark in the county of Orange to elect an additional justice of the peace."

"The bill was introduced in the Senate on the 28th of February, passed the same day, and passed the Assembly on the 3d of March. It provided for the election of an additional justice at the next annual town meeting, which was on the 7th of March. It was first brought to my attention on the 6th, if I had signed it then, the fact that it had become a law would not have been generally known to the people of the town, and an election under such circumstances would probably have caused much dissatisfaction.

Since then I have made careful enquiry and am satisfied that there is no good reason for excepting the town from the operation of the general laws under which each town elects four justices. In addition to the four justices already elected in the town of Deerpark, there is a police justice in

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[21] The memorial (Sen. Doc. No. 49) proposed a constitutional amendment providing for the reduction of canal tolls, a loan on the credit of the State for the payment of the canal debt, the establishment of a sinking fund for the discharge of the loan, and limiting tolls to rates sufficient to provide only for said sinking fund, the interest on the debt so created, and the expense of keeping the canals in repair.

Port Jervis, the principal village of the town, who has been elected under the village charter. The judicial force is now quite sufficient.''

The bill was not passed over the veto.

March 9. To the Assembly:

Veto of a bill entitled "An act to incorporate the Cascade Association of the Village of Little Falls."

'' The bill provides that certain persons named, and their associates, are ' constituted a body corporate by the name of the ' Cascade Association of the village of Little Falls,' for the purpose of protecting life and property in said village, and for the mutual benefit and literary advancement of its members.'

Incorporations for nearly every proper object may be effected under the comprehensive laws of the State for the formation of corporations. Benefit societies may be incorporated under chapter 668, Laws of 1865; literary societies under chapter 302, Laws of 1862. There is no general law which makes provision, in terms, for corporations ' for the protection of life and property,' as mentioned in the bill herewith returned, but if it is intended by this vague description to organize a fire company, that object may also be attained under existing general laws, and the village authorities, under the village charter, are also empowered to make suitable provision to protect property from fire by organizing such companies. If the bill has any other objects than these, they ought to be expressed in plain and unmistakable language.

I take this opportunity to call your attention again to the evil of unnecessary special legislation. The bill in question affords an example of an enactment for which there is not, apparently, the slightest necessity. The whole machinery of legislation is put in motion to incorporate a society or club which may be incorporated under existing general laws. The time of the Legislature is occupied in the consideration of bills of this character, and the unnecessary burden is thrown upon the Executive of examining them, and returning them, as he feels it his duty to do, with his objections.''

The bill was not passed over the veto.

March 15. To the Assembly:

Veto of a bill entitled "An act to extend the operation of chapter 938 of the Laws of 1867, being 'An act providing for relief against illegal taxation in the counties of Herkimer, Otsego, Chenango, Onondaga, Saratoga and Fulton,' to the county of Westchester."

'' The bill proposes to extend over the county of Westchester the provisions of chapter 938 of the Laws of 1867. This last mentioned act, approved by my predecessor, gives power to the supervisors of several counties named therein, viz: Herkimer, Otsego, Chenango, Madison, Onondaga, Saratoga and Fulton to refund to the parties who paid the same such taxes as they may find to have been improperly levied at any time since the year 1861; and authorizes them to levy the sum so refunded as a new tax upon the county at large. Subsequently, by chapter 860 of the Laws of 1869, the counties of Herkimer, Otsego and Madison were exempted from the operation of the act of 1867. The cases for which this special provision was made, are understood to consist chiefly of claims made by certain corporations for repayment of taxes paid by them during the war without protest or contest on their part. In one instance, or perhaps more, of a like tax levied in other counties, payment was refused or made under protest, and, after prolonged litigation, the tax was declared to have been improperly laid. Other parties, who did not at the proper time avail themselves of their privilege to appeal to the courts, and who did not, probably, look upon the tax as unfair and oppressive, now seek to have their cases reopened and to have repaid to them moneys which they paid without hesitation, and which, with other moneys raised by taxation, have been applied to the support of the State and local governments.

If the cases to which the act of 1867 applied, and the proposed bill would apply, were cases of great hardship and practical injustice, there might be some reason for providing an extraordinary remedy by legislative action. As they are not such, I cannot perceive the propriety of reopening now these old reckonings of the share which each taxpayer of the county was in past years bound to pay toward the public expenses. The claims which will be put in will be founded, it is understood, upon a construction given by the courts to the law exempting the securities and public debt of the United States from local taxation. At the time of their levy, the taxes now sought to be refunded were almost universally believed to be fair and equitable; the parties themselves on whom they were levied paying them without complaint. It is not probable that any of those who now seek relief paid more than their just contribution to the great expenditures of that period; notwithstanding that, since then, it has been decided that a certain portion of personal property, including even ready money, in the form of legal tender notes, should have been exempted from all taxation.

The corporations and the shareholders who resisted the State tax, did so successfully under strict construction of law. They were equitably bound to contribute their fair share toward the expenses of the government. The statute of 1863 provided for a tax on bank and other moneyed corporations, on a valuation, equal to their capital stock and surplus earnings less ten per cent of the surplus. Under this act a litigation arose between tax commissioners and certain banks, when capital was invested largely in

United States securities, and was decided in favor of the banks.

Then the State passed a law, chapter 97, Laws of 1865, designed to reach the shareholders in the banks by taxing the shares as personal property. This law was held invalid in the United States court, not because such shares were not taxable, but because of a defect in the law. (See Van Allen v. The Assessors, 3 Wallace, U. S. Reports, page 573.) This defect was remedied by chapter 761 of the Laws of 1866, under which, while the bank capital is not taxed, the shareholders are, and the validity of this law has not been disputed.

Many, if not quite all, of the claims now made for repayment of taxes, come from those who paid upon their capital, or upon their shares before the law of 1866.

These claims are not, therefore, in my judgment, of a nature to appeal powerfully to our sense of equity. If the claimants had the power at the time to resist in the courts the payment of a just and equitable tax, and neglected to exert the power, and assert their strict legal rights in the ordinary way and at the proper time, that affords no sufficient excuse for providing now a special tribunal for considering their demands, for reopening and resettling tax levies made in good faith years ago, and for levying new burdens on the taxpayers of to-day, to meet claims which may fairly be objected to now as having become, by the lapse of time, stale. It would be a bad precedent to allow the boards of supervisors to go back over so long a period to reconsider the acts of their predecessors in this respect, unless in instances of very great and most manifest oppression. When, in consequence of the great expenditures rendered necessary by the war, all taxpayers had to endure unusual burdens, the hardship was certainly not felt so severely by the class who were favored by exemption of part of their property from taxation, as by others. While content that this class should have all their legal rights, I do not think we are bound to provide special means for remedying their own neglect to enforce their rights. I therefore return the bill to you in the confident belief that, on reconsideration, you will agree with me that it should not pass into a law."

The bill was not passed over the veto.

March 17. To the Assembly:

Veto of a bill entitled "An act to provide for the appointment of an additional clerk for each of the district courts in the city of New York."

"The act not only provides for the appointment of an additional clerk by each of the justices of the several district courts in the city of New York, but it fixes the compensation of the clerk, and directs the board of supervisors to raise by tax the amount necessary to pay the salaries of the appointees.

There are nine district courts in the city of New York. The expense of maintaining these district courts, in connection with the police courts, is at least $450,000. There is no valid reason for increasing this expense; it should rather be diminished.

Each district court, in addition to the justice, who receives a liberal salary, has a clerk whose salary is $6,000 per annum; a stenographer, who receives $2,500 per annum; two attendants, a janitor, and an interpreter, each of whom receive about $1,200 per annum. It is well known to those who are conversant with the business of the courts, that in all of them, this clerical and other force is sufficient, and more than sufficient, for the business which appertains to them. This bill, therefore, if I signed it, would authorize the appointment of nine unnecessary officers, each of whom would receive $6,000 per annum, and it would add $54,000 annually to the taxes of New York city.

If bills like this are permitted to become laws, no efforts of the authorities to reduce expenditures and taxation can be successful. I cannot, therefore, give it my approval."

The bill was not passed over the veto.

March 22. To the Assembly:

Veto of a bill entitled "An act to amend chapter 311 of the Laws of 1859, passed April 14, 1859, being an act to provide for the inspection and sealing of gas meters, and for the protection of consumers of illuminating gas, and further to amend chapter 116 of the Laws of 1860, passed March 24, 1860, being an act to provide for the appointment of deputy inspectors of gas meters, to reside in different parts of this State."

" The first section of the bill returned amends section 1 of chapter 311 of the Laws of 1859, by providing that for every stamp or seal put upon a gas meter by an inspector, the inspector shall receive five cents, to be paid by the manufacturer of the meter. This is in addition to the salary now payable in the first instance out of the State treasury, but which is ultimately charged and assessed by the State upon the different gas companies.

The right of the Legislature to provide for the inspection of gas meters (which are ' measures '), and to charge the expenses upon the companies who sell the gas by these measures, under the constitutional provision relating to weights and measures,[5] will not, I suppose, be denied; but to impose a tax or charge upon the manufacturer of the meter, to be paid to the inspector, is, I respectfully submit, clearly in violation of that portion of section 8 of article 5 of the Constitution of the State, which abolishes ' all offices for the weighing, gauging, measuring, or inspecting any merchandise, produce, manufacture, or commodity whatever.'

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[5] Const. 1846, art. 5, § 8.

The meter can properly be inspected at the expense of the individual or corporation using it as a measure for the sale of gas, but not at the expense of the manufacturer, who holds it merely as a mechanical production, an article of manufacture. In this opinion, I respectfully submit, the Attorney General of the State concurs.

There is another objection to this bill, which being stated, will also, I am confident, command the assent of the Legislature. It is this: The inspector of gas meters is an officer of the State appointed by the Governor, by and with the consent of the Senate. By chapter 116 of the Laws of 1860, his salary was increased from $1,500 to $2,500 per annum, and he was authorized to appoint deputy inspectors, to reside in different parts of the State where gas meters were manufactured, who were to receive two dollars a day from him out of his salary when actually engaged in the discharge of their duties.

There can be no doubt, I think, that this provision was not only wise, but sufficient for the accomplishment of the end in view. The inspector would appoint only when necessary, and the appointees would be engaged only when necessary, the chief inspector being obliged to pay them out of his increased salary a *per diem* allowance.

The bill now returned makes an entire change in this respect. It authorizes and requires the inspector to appoint three deputies, and no more, one for New York, one for Brooklyn, and one for Albany, each of whom shall receive a salary of $1,500, to be paid primarily out of the State treasury (ultimately to be assessed upon and apportioned among the gas companies). If these deputies are needed in New York and Brooklyn and Albany, it is difficult to see why they will not be required also for the other cities of the State. Moreover, if the public interests demand these appointments under salary (which is greatly to be doubted), I respectfully submit that, as matter of public policy, they should be appointed as the chief inspector himself is appointed, namely by the Governor and Senate. It seems to me impolitic, if not improper, to confer upon the inspector, who is an appointee of the Governor and Senate, the power to appoint three deputies, each of whom possesses as much power as he does, and who together draw from the treasury of the State nearly twice the amount of his salary.

I therefore respectfully submit that this bill should not become a law.''

The bill was not passed over the veto. By the Public Service Commissions act of 1907, chap. 429, the office of inspector of gas meters was abolished, and the statutes relating to that subject were repealed. The Commissions were authorized to appoint inspectors of gas meters.

March 23. To the Assembly:

Veto of a bill entitled "An act [to amend an act] to incorporate the Little Valley Water-Works Company."

'' The bill creates a private corporation, by the corporate name of the Little Valley Water-Works Company, with a capital stock of not less than three nor more than ten thousand dollars, for the purpose of supplying the village of Little Valley with pure and wholesome water; and authorizes this private corporation, for the purpose mentioned, to enter upon any lands, streets, highways, roads, lanes, canals, railroads, or public squares through which they may deem proper to convey water and to lay pipes and aqueducts. The corporation is also authorized to enter upon any lands, even without the consent of the owner, for the purpose of making an examination, survey and map of the lands, the title to which they intend to acquire under the provisions of the act. In case they cannot agree with the owners and occupants of lands and water which they intend to take and use, they are authorized to apply to the supreme court for the appointment of commissioners to determine the compensation to be paid, and upon the payment or legal tender of the amount awarded by the commissioners, or in case of appeal therefrom by the court, the corporation is authorized to enter upon and take and hold the lands, water and property for which compensation is awarded. The company is authorized, when its works are completed, to make contracts and agreements for the use and distribution of its water; in other words, to sell the water, at its own price and upon its own terms, to whoever may choose to buy it.

The bill, therefore, creates a private company with power to take private property against the consent of the owners by the exercise of what is commonly called the right of eminent domain, upon the theory that it is taken for a public use, while in fact it is taken to empower a private corporation to construct aqueducts and reservoirs which would enable them to sell water to the public for their own private gain. There are such grave doubts about the constitutionality of such a law that, although I am aware that the legislation is not without precedent in this State, I feel it my duty to withhold my approval from this bill, and I do so after having asked and received the opinion of the Attorney General of the State.

The right of the Legislature to confer upon cities and villages the power of constructing water-works for the use of the public, and to that end, to delegate to them the right of eminent domain by which they are enabled to obtain the title to private property for public use, is indisputable, and, as a general rule, such works have been constructed in this State by or under the direction of municipal authorities; but care must be taken to discriminate between powers delegated to, or conferred upon, municipal corporations and similar powers sought to be conferred upon individuals or private corporations. If the Legislature can authorize a private corporation to acquire title to lands and property against the consent of the owner, as is done by the bill herewith returned, it can authorize an individual to do the same.

I cannot learn that the courts have ever decided that the Legislature could confer upon any individual or association of individuals the right to take any private property, against the owner's consent, for the purpose of enabling the individual or association of individuals to sell to the public any article, even pure and wholesome water, for private gain. The Attorney General informs me that he is not aware that in this State the exercise of the right of eminent domain under the Constitution[h] has been carried further than to authorize the creation of corporations to build railroads, plank, macadamized and turnpike roads, bridges, ferries, etc., which are confessedly for public use, and that it has never been held that the property of one man could be taken and given to another, or to an association, for a purpose not strictly of a public use, although full compensation should be made. And he says, further, that as the spirit and intention of this bill seems to be to authorize this corporation to possess itself by compulsory proceedings of waters, streams and springs in the locality named, and to hold the water for sale to the inhabitants for the private profit and speculation of the corporators, dictating their own terms as to price, that it is difficult to distinguish such an enterprise from those entered upon by incorporations formed under general laws, or by private parties, for developing mines and quarries, or engaging in any other manufacturing or mechanical pursuit, all to inure to the public benefit, but none of which general laws arm the corporation with power to take by compulsion private property for their business purposes.

While it may be, as is claimed by some, that the question is not free from doubt, and while, as I have said before, there are precedents for somewhat similar legislation to that proposed by this bill, yet, for the reasons given, and inasmuch as owners of private property likely to be affected by its operation have remonstrated to me against its becoming a law, I respectfully submit the objections which have been suggested in the hope that they will be carefully considered and sustained by the Legislature.'"*

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[h] Const. 1846, art. 1, § 6.

The bill was not passed over the veto. For a similar veto, see *post* p. 320.

March 28. To the Senate:

Veto of a bill entitled "An act for closing the offices of the sheriff and county clerk of the several counties, and register of the city and county of New York, and county of Kings, on certain holidays."

"If the object of this bill be to afford clerks and employes, in the offices named, the privilege of being absent on the days established by law as holidays, in respect to the presentation and payment of notes, bank checks and bills of exchange, I deem it hardly necessary to pass a law for that purpose, inasmuch as there are few public offices in which the privilege is not accorded already, for, although kept open ostensibly, business is suspended to such an extent as to permit the greater portion of the employes to absent themselves.

I do not think it wise to close these offices entirely, and, in effect, to prohibit altogether the transaction of business therein on holidays; and I deem it unnecessary to do more than suggest the great inconvenience which would result to the public if this bill should become a law. Inability to procure the docketing of a judgment in the office of the county clerk, or the deposit of a deed or mortgage with the clerk or register, for record, on the days indicated, would operate greatly to the disadvantage of the public, and might result in serious loss, and, perhaps, irreparable damage to those who had business to transact with these officers. The same objection applies to the closing of the sheriff's office, by means of which the delivery and execution of process of the courts might be hindered and delayed and the ends of justice thwarted.

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* Water-works companies may acquire property by condemnation. Stamford Water Co. v. Stanley (1886), 39 Hun 424; Re New Rochelle Water Co. (1887), 46 Hun 525; Pocantico Water-works Co. *v.* Bird (1891), 130 N. Y. 249.

If there was an entire cessation of business on these legal holidays, as on Sundays, there might be more reason for the passage of this law, but the customary partial suspension does not, in my opinion, justify the compulsory closing of these offices, access to which, at all proper times, for the public convenience, should be facilitated rather than impeded."

The bill was not passed over the veto.

March 28. To the Assembly:

Veto of a bill entitled "An act relative to the assessment roll of the town of Oswegatchie."

"It is precisely similar to a bill which passed the Legislature in 1869, and which was then returned unapproved, for the following reasons, which are as forcible now as then.

The bill provides that the assessors of the town of Oswegatchie shall hereafter, in all assessments for the purposes of taxation, make a roll for each of the wards in the city of Ogdensburgh, and another for that portion of the town not included within the corporate limits of said city, and shall deliver one of said rolls to the supervisor of each ward; and yet, that the warrants issued for the collection of the taxes shall be addressed and delivered to the collector of the town.

The bill is, in my judgment, a needless interference with the details of the duties of town assessors and town supervisors, which are regulated, and no doubt wisely regulated, by the general laws.

The city of Ogdensburgh is a part of the town of Oswegatchie, and its citizens have their share in electing the supervisor of the town, whose jurisdiction as a town officer extends over the city, as well as over the rest of the town, for all town purposes. So long as the city continues to be a part of the town, it is not right that any of his duties and powers should be devolved upon the ward supervisors, whose jurisdiction is much more limited.

If there be sufficient reason for making the proposed change, then it should be made by a general law applicable to all cities and towns similarly situated.''

The bill was not passed over the veto.

March 29. To the Assembly:

Veto of a bill entitled "An act to incorporate the New York Musical Instrument Saving and Loan Society."

'' There is no necessity for the passage of a law to accomplish the object of this bill. The incorporation may be effected under the general law. Chapter 368, Laws of 1865, makes express provision for the organization of musical societies.''

The bill was not passed over the veto.

March 31. To the Senate:

Veto of a bill entitled "An act supplemental to and amendatory of chapter 842 of the Laws of 1868, entitled 'An act to provide for the transmission of letters, packages and merchandise in the cities of New York and Brooklyn, and across the North and East rivers, by means of pneumatic tubes, to be constructed beneath the surface of the streets, squares, avenues and public places in said cities, and under the waters of said rivers,' passed June 1, 1868, and of chapter 512 of the Laws of 1869, entitled 'An act supplementary to chapter 842 of the Laws of 1868, in relation to carrying letters, packages and merchandise, by means of pneumatic tubes, in New York and Brooklyn, and to provide for the transportation of passengers in said pneumatic tubes.'"

''As appears by its title and provisions, this bill is supplementary to and amendatory of two acts passed in 1868 and 1869.

The act passed in 1868, amongst other things, authorized certain persons named therein and their assigns to lay down, construct and maintain one or more pneumatic tubes, of a mean interior diameter of not exceeding 54 (fifty-four) inches, to convey letters, parcels, packages, mails, merchandise and property, through said tubes for compensation, by vehicles to be run and operated thereon by the pneumatic system of propulsion, and authority was given to erect on the sidewalks, lamp-post boxes, pillars, or receptacles, not exceeding 30 (thirty) inches in diameter, and without limit as to number, connected with such tubes, for the deposit of letters, parcels and property to be transmitted therein. For the purpose of laying and constructing said tubes, the said persons or their assigns were authorized to make such openings in said streets, squares, avenues or public places under which said tubes were to pass as might be necessary and proper. The Croton aqueduct department was authorized to make such regulations as would prevent, as far as possible, the obstruction of any street, square, avenue or public place. It was required that the said persons or their assigns, should first lay down and construct one line of said pneumatic tubes from the post-office in Nassau street, between Liberty and Cedar streets, in said city, not extending above Fourteenth street, which should be put in successful operation, and continue so for the period of three months, and a certificate to that effect, to be made by the postmaster, for the time being, of the city of New York, and the mayor and comptroller of said city, or a majority of them, should be filed in the office of the Secretary of State, before proceeding to lay down and construct any other lines of such pneumatic tubes as therein authorized. By one of the sections of said act, the said persons or their assigns were authorized to incorporate themselves under the general manufacturing and mining act.

By the act passed in 1869, it was provided, that if the postmaster should neglect or refuse to give his consent to connect said tubes with the post-office, the said persons or their assigns instead of performing the foregoing requirement, and in lieu thereof, should first lay down and construct one line of pneumatic tubes, from Warren street, at its connection with Broadway, southerly under Broadway, to the point of intersection of Cedar street therewith, or to some point within 200 (two hundred) feet thereof. It was also provided, in this act, that the tubes should not exceed 54 (fifty-four) inches interior diameter, and authority was given such persons or their assigns during the 'laying, construction and repairing of the pneumatic tubes and appurtenances,' to make such openings in said streets, squares, avenues and public places, through and under which said tubes were to pass, as might be necessary, subject to the regulations therein before provided. It is claimed that the said persons or their assigns, organized as a corporation under the sixth section of the act of 1869, and the bill returned herewith assumes that they duly organized by the name of the 'Beach Pneumatic Transit Company;' and it is expressly provided, by section ten of this bill, that nothing therein contained 'shall be construed to limit or restrict any of the powers, rights and privileges heretofore granted to said corporation.'

No tubes have been laid under either of said acts, as required by their provisions, but there has been constructed in Broadway, between Warren and Murray streets, without authority of law, a tube 8 (eight) feet in diameter, or nearly double the size of those authorized which has not been used for the purposes declared by the act, but has been kept on exhibition.

The bill under consideration declares that this tube, between Warren and Murray streets, shall be deemed to be the preliminary line of pneumatic tubes 'duly certified,' required by the provisions of the act, to which this bill is proposed as supplemental and amendatory. It will be seen that the bill under consideration revives two acts, containing important powers and privileges, none of which have been exercised according to the laws now sought to be revived, and that the provisions of those acts, and of the bill herewith returned, must be considered as one scheme.

I have given, to the measure thus presented, careful examination and consideration, from the time the bill reached the executive chamber, and I have the most decided conviction, for reasons which I will proceed to state, that I ought not to give it my approval.

I have given a public hearing to the parties interested. I have patiently heard and weighed all that could be said in its favor by the parties to the bill, as well as those who were led to take part in favor of the measure because of their interest in the general question of increasing facilities for more rapid city transit, but they have failed to change my first conviction derived from an examination of the subject, which, so far as it relates to a railway under Broadway, is not new to me.

Soon after the bill reached me, I addressed a communication to Mr. E. H. Tracy, chief engineer of the department of public works, in the city of New York, who is charged, under the direction of the head of that department, with the care of the Croton aqueduct, water-passes, sewerage and underground works of the city, asking his opinion and judgment as to the practicable character and effect of the proposed scheme. He has furnished me with a thorough and comprehensive report upon the whole question, unqualifiedly condemning the project and pointing out the great and irremediable injury which would be produced if it were attempted to be put in operation. Mr. Tracy is specially qualified to furnish an intelligent and reliable opinion on the whole subject; he was connected with the building of the Croton aqueduct works of the city during fourteen years, from the commencement to the conclusion of that great enterprise, first as assistant, and finally, as chief engineer in charge thereof. Subsequently he was chief engineer of the city department of the Croton aqueduct, in charge of the laying of water pipes and building sewers. He has had also a large experience in railroad construction, and since the organization of the present department, has been the chief engineer in charge of its underground works. No one can be found in the whole range of his profession, who has greater experience than he upon such questions or who can claim to be his superior in professional attainments His judgment, in regard to the subject under consideration, is obviously entitled to great weight.

The bill under consideration authorizes the said company, organized under the act of 1868, to construct, maintain and operate an underground railway for the transportation of passengers and property in the city of New York, extending from Bowling Green, under Broadway to Fourteenth street, thence under Union square to Seventeenth street, thence under Broadway to its junction with Central park and Eighth avenue, with a branch railway from Union square under Fourth avenue to Harlem river, and across and under the bed of said river to the northerly shore thereof, by means of tubes of enlarged diameter, sufficient for the construction of a railway or railways therein, and the carrying of passengers therein; and also to construct within said tubes two or more tracks of railway. It is further provided, that these passenger tubes shall, 'as far as practicable,' follow the center line of the aforesaid streets, and shall not occupy in the aggregate a greater space than 31 (thirty-one) feet in width by 18 (eighteen) feet in height, exterior measurement. The company are authorized in addition to construct 'turnouts and stations' without limit, and 'flues, openings and stairways for ventilation' without number.

The work is to be done under the direction of three engineers or a majority of them, one of whom is to be appointed by the department of public works, and the remaining two (or the majority) are named in the bill, who are to adopt needful precautions. The said engineers, or a majority of them, are to decide whether the pneumatic system or a suitable locomotive shall be adopted by said corporation for the propulsion of the cars to be used.

If the said company shall not comply with the provisions of the act the only remedy provided, is that the engineer shall notify the mayor, and he may bring a suit against them; but it is further declared, that in all cases, the use of the streets, avenues, squares, grounds and places, and the right of way under the same, shall be considered to be a public use, consistent with the uses and purposes for which the mayor, aldermen and commonalty of the city of New York hold said streets, avenues, squares, grounds and public places; and that, as far as practicable, the municipal authorities of the city shall at all times aid the corporation in the construction of the work.

The said company are given the right to acquire title and hold any real estate or interest therein as may be necessary to enable them to construct, operate and maintain such tubes and railway, and to construct and maintain proper platforms, stations and buildings of said corporation, at such points along said tube as may be convenient and suitable for the ingress and egress of passengers, and for the receipt and discharge of freight and packages. All changes or alterations in the sewers, water-pipes or gas pipes that may be necessary for the proper construction of said tubes, are to be done by the said company, the city authorities having only a supervision thereof.

The said company are prohibited from constructing any station, depot or other building or work upon any land belonging to the mayor, aldermen and commonalty of the city of New York, either in their own right or as trustees or commissioners, without the consent of the mayor, aldermen and commonalty first had and obtained; but nothing in the act shall be construed to authorize the said mayor, &c.,

to donate, lease or sell any portion of the ground surface of any public park of said city, beyond what may be absolutely necessary 'for the exit from and entrance to said railway.'

This would give the common council power to grant to the said corporation spaces in the parks for such exits and entrances, and with the consent of that body, they could proceed under their general powers to acquire such portions of the several parks, along the proposed route, as they should require by commissioners under the provisions of the general railroad act. The parks thus affected would be the City Hall park, Union Square park, Madison park and Central park. It is further provided, that the travel through streets shall not be interrupted, except by the permission of the commissioner of public works, and that temporary bridges shall be constructed when the surface of Broadway is broken. It is not required that any amount of capital shall be paid into the said company before the work is commenced, but it is required that within 10 (ten) days the said company shall file with the State Comptroller a bond (it is not stated to or with whom said bond is to be made), in the penal sum of $200,000 (two hundred thousand dollars) with sureties, to be approved by said Comptroller, that active operations shall be commenced within 90 (ninety) days after the passage of the act, and for the completion of the section of passenger tubes, with 2 (two) railway tracks from Bowling Green to Fourteenth street within 2 (two) years thereafter, and for the completion of the remainder of said passenger tubes within 5 (five) years thereafter; but it is further provided that, in case of delay by legal proceedings, or 'extraordinary causes beyond the control of said corporation,' which shall compel the stoppage of the work, the time so lost by said stoppage shall be added to the time allowed for completing said tubes. This is all the provision as to the time when the work is to be performed in part or in whole.

It will be seen, amongst other things:

First. That Broadway, for its entire length, is surrendered to this company, for an indefinite period of time, for the construction of passenger tubes, under the provisions of this bill, and ' one or more ' tubes under the other acts, to which this is proposed as supplemental, for a pneumatic or underground railway, as shall be decided. It is fair to assume that the purpose of the bill is an underground locomotive railway. The facts that the pneumatic process, provided for by the previous act, has not been carried into effect by the company, that it has proved a failure in other places where it has been fully tried, and that the bill makes such full provision for an underground locomotive railway, make it a fair assumption that such a railway is intended; at all events, it is fully authorized by the bill.

Second. It provides that a tube or opening may be made under the surface of Broadway, following the center line ' as far as practicable,' and occupying, in the aggregate, a space not greater than 31 (thirty-one) feet in width, by 18 (eighteen) feet in height. It is argued that the antecedent words, ' as far as practicable,' in the sentence, relate to the size of the tubes as well as ' the position,' in which event there is no limit to what might be held ' practicable.' There is, in addition to the width authorized for the tubes, authority without limit for turnouts and stations. To allow the proper space between the top of the tube and the surface of the street, the bottom of this tube must be about 22 (twenty-two) feet below the surface. This will place such bottom, at a portion of the route 10 (ten) feet under tide water. Chief Engineer Tracy reports that, from the character of the soil, such underground road could not be made by tunneling, but would require an open cutting from the surface, necessitating the removal of the pavement and the digging of the soil to the required depth, that the material thus removed could not be allowed to remain in the street without endangering the safety of the vaults underneath, but must necessarily be taken away and brought back again.

Third. By the bill under consideration, the surface of the street is not to be opened without the permission of the commissioner of public works, but, by the previous acts, which are re-enacted by this bill, any street or road may be opened without this permission. By this bill, bridges are required to be constructed to facilitate travel when interruption occurs; by the previous acts, no such requirement exists. The company would, therefore, proceed at once to open Broadway at as many places as they might desire, claiming to be authorized under the acts of 1868 and 1869, and there would be no remedy.

Fourth. The company are only required to follow the center line of Broadway, ' as far as practicable,' after stipulations that ' all needful precautions ' are to be taken to prevent unnecessary interference with the sewers, water-pipes, etc. As the sewers and pipes run at or near the center of the street, it may be found expedient to construct this underground railway at the side of the streets and under the pavements, to the entire destruction of the vaults on the street, and with greater danger to the safety of the buildings adjoining than if in the center of the street. Mr. Tracy, in his report to me, gives it as his judgment that the excavation in the center of the street, where there is quicksand, would endanger the safety of the adjoining buildings, and that, at certain parts of the street, soft mud will probably be encountered, which is likely to flow into the cut and endanger the safety of the adjoining buildings.

Fifth. As to the vaults, there is nothing in this bill which could prevent the company from taking all the space occupied for vaults on Broadway, without the consent of the owners and without compensation. By the act of 1868, referred to, the consent of vault owners, and compensation for the injury, must precede any interference with such vaults for the purposes of the tubes therein provided for, but this bill is silent as to such consent or compensation.

Sixth. The said company are authorized to construct openings, flues and stairways, for ventilation on the street. There must be 10 (ten) or 15 (fifteen) of these in every mile for due ventilation, as Chief Engineer Tracy reports to me. There is no restriction as to where these openings are to be made, and they may be in the most valuable portions of the street, and opposite the most frequented places of business. Through these flues, staircases and other openings, smoke (or if no smoke), gas and noxious vapors will be constantly passing.

Seventh. The company are authorized to carry freight and passengers, and to select any point for their buildings for the purposes of said railway, and may take any man's store or other building without his consent, by proceeding under the general railroad act to make compensation.

Eighth. The company are authorized to occupy the parks for ingress and egress for their railroad, with the consent of the common council, and may, with such consent, proceed to take any part of the parks for their purposes, by commissioners under the general railroad act, and virtually without compensation; for the bill declares that in all cases the use of the streets, avenues, squares, grounds and public places shall be deemed a public use consistent with the uses and purposes for which the mayor, aldermen and commonalty of said city hold the same.

Ninth. The provision for giving a bond for $200,000 (two hundred thousand dollars), not required to be made to the State, the city or any one in particular, does not amount to anything. As it is not required to be made to any one, it could not be enforced, and, if available at all as indemnity, it would not compensate for the damage which might be done to a single building on Broadway. The bill is drawn, in all its provisions, in a loose manner, without adequate guards in any essential, if the scheme were in all other respects practicable.

I have given only a portion (yet I hope sufficient) of the objections of a general character to show that this bill ought not to become a law. Every important interest is endangered, and no private or public right is protected. I deem it my duty, however, to present a portion of the objections to the scheme contained in the report of Mr. Tracy, in addition to those I have referred to:

As to the effect of constructing the tubes under Fourth Avenue:

'The Harlem Railroad Company have their tracks, depots, open cuts, tunnel and bridges over the center of Fourth avenue, under all of which the tubes will have to pass. Where the tracks are now laid on a level with the surface of the streets, they will have to be removed during the construction of the tube. If new tunnels are cut beneath the old ones, they will have to be cut at a considerable depth below them to insure the safety of the present tunnels, and in that part of the avenue north of One Hundredth street, the abutments and piers of the Harlem railroad bridges will have to be supported on top of the tube. The tube can only be built strong enough to support these abutments by great care and at great expense, and will necessitate the abandonment of the present tracks of the Harlem Railroad Company during the construction.'

As to the effect on sewerage:

Mr. Tracy states that 'the tubes will cross the lines of the larger sewers now built in the city. Nearly all that part of the city between Fourteenth street and the Bowery, Chatham street and Broadway now drains into the North river, and a large portion of it through the sewer in Canal street. The proposed pneumatic tube will, almost of necessity, compel a new sewer or sewers to be constructed to carry this drainage into the East river, and, as the surface of the ground at Canal street and Broadway, is but 12 (twelve) feet above tide level, but little descent can be given to the sewer, and, consequently, it must be of great size to effectually drain this descent.

'All of the sewers on Broadway will have to be removed, and the drainage provided for through side streets, as the spaces between the vaults of the buildings will be too narrow in which to build and maintain the sewers.

'The small sewers in the cross streets that would be cut in two by the tube will have to be rebuilt in every case, and the plane of inclination changed so as to descend in an opposite direction from that which they do now. In many cases, this would involve the rebuilding the sewers for several blocks east and west of Broadway, and sometimes in the adjoining streets running parallel with Broadway.'

Mr. Tracy presents other points as to the effect of laying the tubes on sewerage, but these will suffice. He also presents equally strong objections in detail as to the water-mains and pipes and the consequences to them. He concludes his report as follows:

'I give it as my opinion, as an engineer, that the plan of building the pneumatic tube, as proposed by the bill, is impracticable, as well as detrimental to the interests of the city, and without a fair prospect of overcoming the problem of quick transit from one end of the island to the other.

'The work of construction will necessarily be slow, for where rock is not encountered, the subsoil will be so treacherous as to call for great skill, care and expense in constructing the tube, and the buildings along the route, especially on Broadway, will be endangered. The streets will be rendered impassable for months, not only in laying the new gas and water-mains, and rebuilding the sewers, but in the construction of the tube itself, and this blocking of the streets will not only take place in the principal thoroughfare, but in the streets far distant on either side, where sewers will have to be changed. Sufficient space will not be left on Broadway in which to lay and maintain the gas and water-pipes, and where they are laid in the narrow places, between the tube and the vaults, they would be likely to be broken by the jar of the locomotives passing through the tube; thereby causing an inconvenience from the stoppage of water, as well as the liability of the tube itself being broken through by the action of the water pressure. The buildings on Broadway will be left without proper drainage, it being entirely impracticable to build sewers in the streets between the tube and the vaults.

'The travel will have to be suspended upon the railroads coming into Fourth avenue while the work is progressing in that portion of the city. If the ventilators open into the street, as the bill contemplates, they will obstruct the street and fill it with noxious and poisonous gas.'

It is with regret that I am compelled to withhold my approval from any measure which proposes to furnish additional facilities of passenger transit for the people of the city of New York. I realize fully the great necessity which exists in that city for such facilities, and I am aware of the earnest feeling which prevails among the people there and especially among those who reside or own property in the upper section of the metropolis, in favor of the adoption of some feasible plan; but the necessity and the desire for rapid transit should not be permitted to overshadow or overcome the fair consideration of the question as to whether a particular scheme presented is a just, wise and defensible one to accomplish the object sought. I cannot allow myself to be swayed from the conscientious examination of any bill, on its merits, simply because the object proposed is in harmony with the desires of the people, nor am I influenced to decide against any bill of this character merely because it proposes to trench on Broadway or on any other great thoroughfare, or interfere with the prejudices or inclinations of the owners of property on particular streets. Every citizen must yield his preferences and contribute his share of sacrifice to the public good, and great public objects must, at times of necessity, be attained at the serious cost of individual interests and the surrender of individual opinions. But this necessity has its limits, and the measure under consideration is, in my judgment, one of aggression against public interests and would inflict injury to the business and welfare of our great metropolis which could not be estimated or repaired; while, at the same time, it could not accomplish any benefit to the public at large. Broadway, while it is the great highway of travel and the center of business to the people of the city, is, at the same time, the object of pride and admiration of the State and country. Its greatness and its influence do not belong alone to the individuals who, by their enterprise, public spirit and liberality, have made it what it is, but to the whole people, and any scheme which, however specious or popular the pretext, is plainly calculated to destroy it should, and will, meet with general public reprobation."

The bill was not passed over the veto.

April 3. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *April* 3, 1871.

"I transmit herewith a communication, which I have received from the Governor of Pennsylvania, relating to the appointment of commissioners with reference to the proposed Centennial Celebration at Philadelphia, in the year 1876, and I respectfully ask your attention to the same.[22]

JOHN T. HOFFMAN."

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[22] The Legislature adopted a concurrent resolution on the 21st of April, providing for the appointment of a committee, including Governor Hoffman, and three persons to be appointed by him, Allen C. Beach, Lieutenant-Governor, and five senators to be appointed by him, and William Hitchman, speaker, and seven members of assembly to be appointed by him, who were to continue in office until the Centennial Celebration in 1876, co-operate with the representatives of the other States in relation to the Centennial, and report to the Legislature at each session. Members of the committee were required to pay their own expenses.

The following is the communication referred to in the message:

EXECUTIVE CHAMBER,
HARRISBURG, PENN., *March* 29, 1871.

To his Excellency JOHN T. HOFFMAN, Governor of New York:

DEAR SIR.— Permit me to invite your attention to the following joint resolution of the General Assembly of Pennsylvania, approved March 8, 1871, to wit:

"That the Governor and three persons appointed by him, Wm. A. Wallace and James H. Webb, Speakers of the Senate and House, with three members of each branch of the Legislature, to be appointed by the Speakers of the Senate and House respectively, shall be a committee of the State of Pennsylvania, to co-operate with committees from other States and local committees upon the subject of the Centennial Celebration at Philadelphia, in the year 1876, said committee to stand until that time and to report at each intervening Legislature, and make such suggestions and recommendations, from time to time, to the Legislature, as they may think proper and expedient in reference to said Centennial Celebration."

One of the most prominent objects of this resolution is to perfect the necessary preliminary organization at the earliest practicable date, and to gather all necessary information and material to facilitate the operations of the United States Board of Commissioners, to be appointed by the President of the United States, upon the recommendation of the Governors of the different States and Territories, in accordance with an act of Congress "to provide for celebrating the one hundredth anniversary of American Independence, by holding an international exhibition of arts, manufactures and products of the soil and mines, in the city of Philadelphia and State of Pennsylvania, in the year 1876."

It is desired and intended that this Centennial Celebration shall be the grandest affair that has ever taken place, and it is highly important that every possible means shall be employed for the attainment of that object. I therefore most respectfully request and recommend that you direct the attention of your Legislature to the importance of appointing a special committee, at its earliest convenience, to co-operate with the committee of Pennsylvania, in conformity with the provisions of the joint resolution of the General Assembly of this commonwealth.

Very respectfully,
JOHN W. GEARY.

April 4. To the Senate:

Veto of a bill entitled "An act to enlarge the boundaries of the city of Auburn."

"The bill, among other things, adds to the present territory of the city of Auburn, a portion of the town of Sennett, in the county of Cayuga, consisting of about six hundred acres, upon which only eleven freeholders reside, nine of the eleven (who together own a majority in acres of the territory proposed to be annexed) remonstrate against the bill for the reasons, among other things, that the lands within the area are farming lands; that there is no necessity for extending over them a municipal government; that the city of Auburn has a debt of over half a million of dollars, in addition to the one hundred thousand dollars mentioned in the bill, with the contracting of which the rural district had nothing to do; and that the bill makes no provision for exempting the new territory, when annexed, from the lien of that debt. It seems to be clear that this remonstrance should be heeded and I trust that the bill will not be permitted to become a law."

The bill was not passed over the veto.

April 4. To the Assembly:

Veto of a bill entitled "An act to incorporate the Knickerbocker Loan and Trust Company of the city of New York."

"There are, I am aware, upon the statute books of the State, several acts incorporating loan and indemnity, trust and other companies, with powers and privileges, such as individual citizens are not permitted by law to possess or exercise, and I have noticed, with regret, the introduction of several bills, during the present session, which are even more extraordinary in their provisions than any which have been enacted in former years. The incorporation of companies for any single object, not forbidden by law and in accordance with public policy, is well enough, but I respectfully submit that it is against public policy to confer upon any company the power and privileges granted by the bill herewith returned.

An examination of its provisions will show, that under the title of an act to incorporate a loan and trust company, it establishes and permits the following, among other things:

First. A company with power to do a general mercantile as well as real estate business under the words 'shall have power to grant, bargain, sell, buy or receive, all kinds of property, real, personal and mixed, and to hold the same in trust.'

Second. A guaranty and indemnity company, under the words, 'shall have power to guaranty the payment, purchase, performance and collection of promissory notes, bills of exchange, contracts, &c., &c., as well as the title to property, real and personal.

Third. A storage and warehousing company (under words broad enough even to give to it, also, the privilege of a bank of deposit and discount), viz.: 'To receive, upon storage, or deposit, or otherwise, merchandise, bullion, specie, plate, stocks, bonds, promissory notes, certificates and evidences of debt, contracts or other property;' and to take the management, custody and charge of real and personal estate and property, and to advance moneys, securities and credits, &c., &c.;

Fourth. A trust company, under the general language of the whole act.

Fifth. And while the act provides that the rate of interest charged shall not exceed seven per cent per annum, the company is authorized to charge such commissions, upon advances, that is, ' loans of moneys, as the directors may establish and approve.'

Section two fixes the capital of the company at $1,000,000, with power to increase the sum indefinitely, in the manner provided by certain sections of the general act authorizing the formation of corporations for manufacturing, mining, mechanical or chemical purposes.

I respectfully submit that this bill should not be permitted to become a law.

My attention has been called to the fact that, at the last session, I approved a bill, the provisions of which were similar to those now objected to. It was an error on my part, committed through inadvertence, and perhaps inexcusable. It would certainly be inexcusable to repeat it. The public interests demand that such legislation should be stopped, whatever precedents there may be for it."

The bill was not passed over the veto.

April 5. To the Senate:

Veto of a bill entitled "An act for the relief of Simon De Graff, James Conway, and George W. Phelps, and to authorize the Board of Supervisors of the county of Livingston to audit and allow the claims of Simon De Graff, James Conway, and George W. Phelps, for constructing and repairing a bridge over the Genesee River in the county of Livingston, and to levy a tax for the amount allowed."

" The bill provides that a special meeting of the board of supervisors of the county of Livingston shall be held, within thirty days, for the purpose of adjusting and auditing the claims of the persons named therein for constructing and repairing a bridge over the Genesee river between the towns of Geneseo and Leicester, in said county, and authorizes and requires the supervisors to adjust and audit the claims mentioned. They are further required, at the regular session of the board for the year 1871, to 'levy, and collect the amount audited upon the towns of Geneseo and Leicester, or, in the discretion of the supervisors, upon the county of Livingston.'

It is said that a dispute has arisen about the construction of the bridge, and the contract therefor and the payments on account of it, and that this bill is intended to dispose of the same and of the questions in litigation. I do not think that fact affords any reason for the bill becoming a law. Boards of supervisors are clothed with ample powers, under the general laws of the State, in the matter of constructing bridges, levying and collecting the expense thereof and auditing and adjusting claims against the county. If there was any doubt of their power in this particular case, the Legislature might properly confer upon them, special authority to adjust the claims mentioned in this bill, but to undertake to do more, as this bill proposes,— to require the supervisors to adjust and audit the claims, is, in my judgment, an impolitic and unwise interference with the general discretionary powers of boards of supervisors; in other words, it is wrong to compel the supervisors of the county, by special act, to hold a special meeting to consider particular claims and to require the supervisors to adjust and audit them. The matter of auditing and adjusting claims should be left where the general laws leave it, to 'the discretion of the supervisors,' at their regular meetings or at special meetings which may be called at any time by a majority of the board."

The bill was not passed over the veto.

April 7. To the Senate:

Veto of a bill entitled "An act to amend an act entitled 'An act to incorporate the Central Savings Bank of the city of New York,' passed May 1, 1869, amended May 5, 1870."

"The bill extends the time for the organization of the bank one year, and re-enacts and continues in force the act of 1870. The amendment of 1870 was not May 5th, as specified in the title, but May 6th, so that there is an error in the title of the bill.

It appears that this bank was chartered in 1869, and that up to this time it has failed to perfect its organization and to commence business. There would seem to be no good reason for reviving a charter of which, up to this date, the incorporators have neglected to avail themselves. If, however, the original act was unobjectionable, I should make no opposition to its revival. I find, however, on careful examination, that it is objectionable. The sixth section authorizes investment in village bonds, but does not limit the amount of such investment. The limit should be not more than ten per cent of the assets of the bank.

It authorizes loans 'on unencumbered real estate,' it should be on 'unencumbered, improved and productive real estate.' It does not declare whether such loans shall be made on real estate, exclusive of buildings thereon. If it was intended to include buildings in the valuation, provision should have been made for their insurance, and for the assignment of the insurance policy to the bank.

It prescribes no limit to the amount which may be loaned on bond and mortgage. It is usual, in well drawn charters, to fix such limit at not more than forty or fifty per cent of the assets of the bank. That limitation I consider a proper one.

It provides for the accumulation of a surplus of twenty per cent. This is larger than has been recommended by the Bank Department, ten per cent is deemed sufficient.

The seventh section authorizes deposit of the funds of the bank in any incorporated bank or trust company or national bank in the city of New York, but does not limit the amount that may be deposited. It is usual to provide that the sum so kept on deposit, in any one bank, or trust company, shall not exceed twenty per cent of the capital of such bank or trust company. And, also, that it shall not exceed ten per cent of the whole amount of deposits with the savings bank making the deposit.

The large number of bills incorporating savings banks, and the seeming disposition to depart from well established rules relating to their organization, a strict adherence to which is essential to the maintenance of their credit, induces me to call attention to these objections, and to express the hope that the Legislature will sustain them."

The bill was not passed over the veto.

April 7. To the Assembly:

Veto of a bill entitled "An act to levy a tax upon the town of Hopkinton, in the county of St. Lawrence, to pay a debt incurred in building a town hall in said town."

" The general laws of the State relative to the auditing of claims of town officers and other persons against towns, and the raising of necessary sums by tax to defray the same, are sufficient to accomplish the purposes proposed by this bill. The bill is, therefore, unnecessary special legislation."

The bill was not passed over the veto.

April 7. To the Assembly:

Veto of a bill entitled "An act to incorporate the Idlewild Temperance Association of Cornwall."

" This society may be organized under the general laws which provide for the incorporation of societies for 'social,' 'temperance' and other purposes."

The bill was not passed over the veto.

April 7. To the Assembly:

Veto of a bill entitled "An act to provide for making new indices of deeds and mortgages recorded in the county of Queens."

"This bill authorizes the county clerk to make new indices of deeds and mortgages and fixes the compensation to be paid. By section 7, chapter 855, Laws of 1869, the board of supervisors has full power to order and direct the performance of this work and to determine the amount to be paid therefor, which in no case shall exceed a sum to be certified by the county court as reasonable. This special bill is, therefore, unnecessary."

The bill was not passed over the veto.

April 7. To the Assembly:

Veto of a bill entitled "An act to incorporate the Gleneida Savings Bank."

"The bill does not conform to the usual requirements contained in well considered charters of savings banks. It authorizes loans on bonds and mortgages on unencumbered real estate, but fixes no limit to the amount that may be so loaned. This should not exceed forty or fifty per cent of the assets. It does not prescribe that the property on which such loans may be made shall be worth double the amount, exclusive of buildings thereon. It does not provide that if buildings are included in the valuation insurance should be effected thereon, and the policy of insurance assigned to the bank. It uses the words 'unencumbered real estate,' instead of 'unencumbered, improved and productive real estate.' It fixes no limit to the amount that may be deposited in any one bank or trust company. The amount so deposited should not exceed twenty per cent of the capital of such bank or trust company, nor should it exceed ten per cent of the whole amount of deposits of such savings banks. In the seventh section, the word 'condition' is used instead of 'constitution.'

I respectfully call the attention of the Assembly to the fact that, in 1869, an act was passed to regulate and restrict the organization of savings banks, the provisions of which were well calculated to guard against the granting of improvident and ill-considered charters. This act has been generally ignored or overlooked by the Legislature. Several bills have been passed during the present session without any attention having been paid to its requirements. In almost every case the bills have been loosely drawn, and it has been found necessary to recall them for amendment. I notice, by the legislative proceedings, that a large number of bills for the incorporation of savings banks are now under consideration. I respectfully urge the importance of adhering to the provisions of the law of 1869. The tendency is toward the unnecessary multiplication of such institutions, they are the depositories of the savings of the people, who look to them as secure places for the safe keeping of their earnings, and it is, in the highest degree, important that every precaution should be taken to guard them against the liability to loss, and to preserve their credit unimpaired."

The bill was not passed over the veto.

April 12. To the Senate:

Veto of a bill entitled "An act to empower the town of Wellsville to levy a tax for building a bridge across the Genesee River."

"This bill is wholly unnecessary. Under the general laws of the State, the board of supervisors of the county has full power to provide for the building of this bridge and to apportion the expense thereof as may be just. (See Revised Statutes relating to the powers of supervisors, and chapter 855, Laws of 1869.)

It is far better to leave such matters to the local authorities than to provide for them by special enactments."

The bill was not passed over the veto.

April 12. To the Senate:

Veto of a bill entitled "An act for the relief of Ferdinand Frantz."

"The bill requires the Canal Board to hear and determine the claim for damages sustained in the loss of the canal boat 'Major Anderson' caused by the breaking of a weigh lock on the Erie canal, in September, 1870; and if the facts proved shall be such as would establish a legal or equitable liability against the State, in case the State was an individual or a corporation, the board is directed to award to the claimant such sum as he shall be entitled to.

Regarding this as the pioneer bill of a class which, it seems to me, should not meet with favor from the Legislature, I feel it my duty to state objections to it, which, it will be understood, are of general application and will be interposed to every bill of a like character.

The claim is based upon the theory that the State is the insurer of the property of all persons engaged in navigating the canals, and is bound to pay them whatever damages may be sustained by reason of obstructions in the canal, accidents in locks, or remissness or inattention or official misconduct or neglect on the part of the officers of the State.

The claim that the State is an insurer is not a new one, but it was promptly met and answered by the Legislature in 1847, since which time, I believe, it has not, until recently, been revived. In the proceedings of the Senate of 1847, appear two reports from the judiciary committee, numbered, respectively, 142 and 150, to which I respectfully ask your attention. The first of these reports was upon the petition of common carriers engaged upon the canals of the State asking for the passage of a general law recognizing a liability of the State for loss and damage to canal boats and cargoes caused by obstructions in the canals, or remissness or inattention on the part of the State or its officers, and for the appointment of commissioners to examine and pass upon claims. The committee reported against the petition, repudiating the idea that the State was to be considered an insurer, and, among other things, said as follows:

'Many millions of dollars have been, and many more will be, expended, in the construction, enlargement, completion, superintendence and repair of our public canals. It is believed that they afford means and facilities for transportation as safe and useful as any other now in existence, and there is no class of citizens more interested in or benefited by their use than the common carriers upon them. They ought, therefore, in the opinion of your committee, to be willing to meet and bear the ordinary hazard incident to their business. These years of experience have clearly shown, and are doubtless taken into account in fixing the measure of compensation for the service rendered. This compensation, including such hazards, is paid by those who send their property on the canals, so that the owners of such property, in a great measure, become the mutual insurers of each other and pay their premium in the price of transportation.'

This report, having been sustained, a special bill was afterward introduced to provide for the appraisal of damages sustained by the owners for the loss of a canal boat and cargo by reason of an obstruction in the canal. Upon this claim, the committee reported adversely, for the same reasons given in their report against the proposed general law for the appraisal of damages, and, among other things, said as follows:

'The State has discharged a great duty in constructing its public canals, and the benefits thereof are manifest and universal, blessing not only our own citizens but those of other States and nations, and its watchful attentions and liberal expenditures guarantee a continuance of these blessings. It has not hitherto assumed, and it is not believed by your committee that it would be wise to assume the responsibility of its officers and agents to discharge their public duties with care, skill and fidelity. It is believed to be far wiser policy to leave parties to their appropriate remedies against these officers and agents for redress, and when no such remedy exists to leave them to bear such loss as may accidentally fall upon them by the voluntary use of our canals for their own private emolument. Let the State assume these responsibilities and no bounds could be set to the numerous frauds and impositions which would be practised upon them. It would find itself unable to detect and expose them. The same strong reasons which cast the responsibility upon common carriers should deter the State from its assumption of the same; impossibility to show the truth of the case would be found to exist with the State as with the owners of property lost or destroyed.'

I have quoted at length from these reports, both of which were presented by the Hon. Joshua A. Spencer — distinguished in the history of this State — because they declare so concisely and so pointedly sound doctrine in relation to these claims. Swarms of claim bills press upon the attention of the Legislature, some of which are like the one herewith returned, others of a class equally objectionable. They threaten serious inroads upon the treasury, and, by their magnitude and the pertinacity with which they are pressed, create in the minds of the people a prejudice even against the canals, in the maintenance and honest management of which the whole State is so deeply interested.

I enter my earnest protest against them."

The bill was not passed over the veto.

April 12. To the Assembly:

Veto of a bill entitled "An act to incorporate the New York Real Estate Banking Company."

"It is objectionable for the following, among other reasons:

First. It provides that the principal place of business shall be in the city of New York, but does not confine it to that city.

Second. The sixth section confers upon the company, banking powers in derogation of the statutes of this State relating to banking.

Third. The capital fixed is below the limit prescribed for banking associations.

Fourth. No limitation or restriction is imposed upon investments, and the company is not made subject to the supervision of the Bank Department.

Fifth. Article 8, section 4, of the Constitution, prohibits the granting of any special charter for banking purposes, and yet this bill, in substance, proposes the incorporation of a bank without the usual restrictions and with unusual privileges."

The bill was not passed over the veto.

April 15. To the Senate:

Veto of a bill entitled "An act to repair and improve the road from Carthage, in Jefferson County, to Lake Champlain, in the county of Essex."

"By the first section, two commissioners are appointed 'for the purpose of completing the road, authorized by the act' passed April 14, 1841, with power to lay a 'tax upon the same district of country as they were under the said act.'

By a reference to the act of 1841, it appears that three commissioners were appointed 'to lay out and construct' this road, and the powers of commissioners of highways under the act of April 24th, 1835, and of overseers of highways, under section 47, title 1, chapter 16, article 3, part 1 of the Revised Statutes, were conferred upon them for three years.

It is now some twenty-six years since the expiration of their powers and duties, during which time it must be presumed the road has been kept up under the general laws for the maintenance of highways, and it is not a little singular, that, after this lapse of time, a special act should be deemed necessary.

But there are graver objections to the proposed law. Under the act of 1841, the commissioners were to make out a tax upon the lands affected, and if the owner, or his agent, did not appear and pay the same, within a specified time, the commissioners were to cause a copy of the same to be laid before the boards of supervisors of the several counties affected by said tax, who should 'thereupon levy and direct to be collected, in the usual manner, the amount returned to them by said commissioners,' &c.

By this act, the commissioners (on whom the powers of commissioners and overseers of highways are not conferred, as under the act of 1841), are to lay a tax — for which no time or place of payment is specified — and when completed, send a copy of the same to the Comptroller, who shall cause said tax to be entered upon the books of his office, in the same manner as are the non-resident taxes, returned to his office by the treasurers of the several counties of the State.

The counties of Herkimer, Hamilton, and Essex, are affected by this act; and yet, their county organizations are ignored, and a tax is laid by commissioners (whose powers are at least of doubtful extent) and levied by their respective boards of supervisors.

So radical a departure from our system, which recognizes the county through its board of supervisors, as the sole instrumentality for levying taxes, and returning those unpaid to the Comptroller, should not be allowed, except for sufficient cause. The existence of such cause is not to be presumed, in passing upon acts for completing a work which was begun under a statute, in harmony with the system, passed nearly thirty years since, and which work has been maintained under general laws for more than a quarter of a century.

Nor does the act seem to be properly guarded in other respects. By section 3, it is provided that, 'as early as the 1st day of July in each year, after said return shall have been made, as above provided, the Comptroller shall pay, upon the draft of the said commissioners, such sum as they shall certify has been expended by them at that date, and also such further sum, as in their opinion will be necessary to expend, in the repair and construction of said road, previous to the 1st day of January after such draft shall be made.'

Here is no limitation to the amount of the tax laid by the commissioners.

Again: the act of 1841 made it obligatory on the commissioners to give security for the faithful discharge of their duties; the proposed act imposes no such obligation."

The bill was not passed over the veto.

April 15. To the Senate:

Veto of a bill entitled "An act to authorize the employment of stenographers in the surrogates' courts in the second and third judicial districts."

"This bill provides for the appointment of stenographers in the surrogates' courts, and establishes the fees to be paid for each day's attendance for mileage, stationery, and copying testimony, all of which it declares shall be a charge against the several estates in the business of which the stenographers shall be employed.

If the business of any of the surrogates' courts, within the second and third judicial departments (not 'districts' as named in this bill) is such as to render the employment of stenographers necessary, they should be appointed, I am inclined to think, as are clerks and other employes, by authority of the board of supervisors, and the expenses of such employment should be, as in other cases, a county charge. There is, I respectfully submit, no propriety in making the employment and compensation of stenographers an exception to the general rule.

If it is proper to provide for the appointment of stenographers by surrogates at the expense of the estates of deceased parties, as contemplated by this bill, the provision should be general — applicable to the whole State, and not limited to any particular 'judicial department.'

I respectfully call the attention of the Senate to the fact that Assembly bill, printed number 667, which provides for the appointment of stenographers by surrogates in all the counties of the State, who shall be paid a reasonable compensation, to be certified by the surrogate as part of the costs of the proceedings, has passed both Houses of the Legislature and is now before me for consideration.''[23]

The bill was not passed over the veto.

April 17. To the Assembly: Transmitting a report from the minority of the commissioners appointed to revise the statutes of the State.

April 17. To the Assembly:

Veto of a bill entitled "An act to authorize the commissioners of highways of the town of Lowville to borrow money on the credit of said town."

'' It authorizes the commissioners of highways to borrow, not to exceed two thousand dollars, for the purpose of building and repairing bridges and roads, and to give their notes for the amount borrowed, to be paid out of moneys to be raised by tax.

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[23] The general bill providing for the appointment of stenographers in surrogates' courts, referred to by the Governor, was approved by him May 1, and became chapter 874.

It is an unnecessary special bill. The general law of the State (see chapter 855, Laws of 1859) provides that the board of supervisors of any county may authorize certain town officers to borrow, on the credit of the town, such sums as may be necessary to build or repair roads and bridges.

If it is urged that a necessity has arisen since the regular meeting of the board of supervisors to raise money for the purpose mentioned; then the local officers have full power, under chapter 103 of the Laws of 1858, to do the necessary work, and when the expense shall be audited by the board of town auditors, the supervisor and town clerk are authorized to issue an interest bearing certificate setting forth the amount audited and allowed and in whose favor, and such amount, with interest, can be levied and collected in the same manner as other town expenses.''

The bill was not passed over the veto.

April 17. To the Assembly:

Veto of a bill entitled "An act to amend the charter of the Mutual Fire Insurance Company."

'' This company is located in the city of New York. Under the general laws of this State relating to insurance companies, no joint stock company can transact business with a smaller capital than $150,000; and no mutual insurance company can transact business until agreements have been entered into for insurance with at least four hundred applicants, the premiums on which shall amount to no less than $200,000, of which $40,000 shall have been paid in cash, and notes of solvent parties founded on actual and *bona fide* applications for insurance shall have been received for the remaining $160,000.

A bill was passed at the last session of the Legislature, changing the name of the 'Insurer's Own Fire Insurance Company' to the 'Mutual Fire Insurance Company,' and authorizing it, in lieu of the notes and agreement of insurance required of mutual companies under the general law, to receive subscriptions payable in cash and give therefor interest-bearing receipts, and to commence business on a mutual plan as soon as the subscriptions reached the sum of $200,000; thus enabling this company to do a mutual insurance business on a different basis from other mutual companies. It was of doubtful propriety, but had the sanction of the Superintendent of Insurance.

The bill herewith returned excepts this mutual fire insurance company still further from the operations of the general law, by permitting it to do business whenever $100,000, instead of $200,000, shall have been subscribed and paid in cash.

It may be expedient to amend the general law of the State in regard to mutual companies. It seems to me, however, unwise to give to any one of them the special privileges conferred by this bill. The laws relating to their organization and management should be uniform."

The bill was not passed over the veto.

April 18. To the Senate:

Veto of a bill entitled "An act to incorporate the South Hill Waterworks Company in the village of Ithaca, Tompkins county."

"The bill creates a private corporation for the purpose of supplying a part of the village of Ithaca with pure and wholesome water, and authorizes the corporation to enter upon and take land and water, being private property, against the consent of the owners, by the exercise of what is called the right of eminent domain, upon the theory that it is taken for a public use, while, in fact, it is taken to enable a private company to sell water to the public for private gain. It contains, in substance, the same provisions as Assembly bill No. 18, incorporating the Little Valley Waterworks Company, which was returned by me to the Assembly, not approved, March 23, 1871, with a message, in which I presented the following views, after having received the opinion of the Attorney General of the State:

'There are great doubts about the constitutionality of the bill. The right of the Legislature to confer upon cities and villages the power of constructing water-works for the use of the public, and to delegate to them the right of eminent domain, by which they are enabled to obtain the title to private property for public use, is indisputable, and, as a general rule, such works have been constructed in this State by or under the direction of municipal authorities, but care must be taken to discriminate between power delegated to, or conferred upon, municipal corporations, and similar powers sought to be conferred upon individuals or private corporations. If the Legislature can authorize a private corporation to acquire title to lands and property for such purposes, against the consent of the owners, it can authorize an individual to do the same. I cannot learn that the courts have ever decided that the Legislature could confer upon any individual or association of individuals the right to take any private property, against the owner's consent, for the purpose of enabling the individual or association to sell to the public any article, even pure and wholesome water, for private gain. As the spirit and intention of this bill seems to be, to authorize this corporation to possess itself, by compulsory proceedings, of waters, streams and springs in the locality named, and to hold the water for sale for the private profit of the corporators, dictating their own terms as to prices, it is difficult to distinguish the enterprise from others entered upon by incorporations formed under general laws, or by individuals, for developing mines and quarries, or engaging in any manufacturing or mechanical pursuit, under laws none of which confer the power to take by compulsion private property for these business purposes.'

These views appear to have met the approval of the Legislature, for since they were submitted to the Assembly several bills have been amended and passed in accordance therewith."

The bill was not passed over the veto. See *ante* p. 287 note.

April 19. To the Senate:

Veto of a bill entitled "An act to incorporate the Fulton Savings Bank of the city of New York."

"My objections are:

1st. There is a discrepancy between the title of the act and the first section in the designation of the name of the bank. The former describes it as the 'Fulton Savings Bank of the city of New York,' the latter simply as the 'Fulton Savings Bank.' There is a savings bank in the county of Oswego known as the 'Fulton Savings Bank,' and this similarity of names might lead to embarrassment.

2d. The sixth section authorizes loans 'on unencumbered, productive real estate;' it should provide that such loans may be made on 'improved, unencumbered and productive real estate, situate within this State.'

3d. The bill does not specify whether buildings are to be included in valuation upon which loans may be made. If they are included, provision should be made for their insurance and for the assignment of the insurance policy to the bank.

4th. No limit is prescribed to the amount that may be loaned on bond and mortgage. It should not exceed forty or fifty per cent of the assets of the corporation.

5th. The bill authorizes an available fund equal to one-third of the total amount of deposits. Twenty per cent is a proper limit.

6th. The bill authorizes temporary deposits in any of the incorporated banks or banking associations in the city of New York, but does not limit the amount that may be deposited with any one of them. It is usual and judicious to restrict such deposits to not exceeding twenty per cent of the capital of the savings bank, and not exceeding twenty-five thousand dollars or ten per cent of the whole amount of deposit with the savings bank.

7th. There is no provision for the accumulation of a surplus."

The bill was not passed over the veto.

April 21. The Legislature adjourned without day.

ACTION ON BILLS AFTER ADJOURNMENT OF THE LEGISLATURE.

November 28.

Veto of the following bills:

"An act in relation to the deposit of manure in the city of New York."

"Board of Health should regulate this matter; they have power to do so."

"An act for recording of notices of pendency of action and certificates of satisfaction of mortgage on file in the county of Richmond, for the payment of the costs and expenses thereof, and of the books and materials required for the same."

"Board of supervisors have full power."

"An act to incorporate the Staten Island North Side Railroad Company."

"Should be organized under general railroad act."

"An act to incorporate the Harlem Hospital of the city of New York."

"Usual provision, subjecting the corporation to general regulations of the Revised Statutes, is omitted."

"An act to amend an act entitled 'An act to incorporate the Southern Tier Savings Bank of the city of Elmira, Chemung county,' passed March 19, 1869."

"Adds eight new trustees, by legislative appointment; present trustees, the institution being already organized, protest against this addition to their number."

"An act for the better protection of health in the city of New York."

"Gives a monopoly in matters the regulation of which pertains to the local authorities."

"An act relative to insane persons, lunatics, idiots and persons of unsound mind in the city and county of New York."

"Provisions of bill limited to city of New York. If its reforms be proper, they should extend over the whole State. A better and wiser law will probably be framed after further agitation of the subject."

"An act to provide for payment of a bounty to the representatives of Robert M. Ferris, deceased."

"Directs a tax and orders payment of the proceeds to certain private persons without saying anything of the nature of their claims, although the title of the bill speaks of it as a claim for bounty. If it be a legal charge, the Legislature should not audit accounts for the supervisors; if illegal, they should not reverse the action of supervisors in rejecting it."

"An act to provide for the construction of a bridge over the Erie canal, in the city of Syracuse."

"Chapter 767, Laws of 1870, appropriated $10,000 for an iron bridge. This bill reappropriates and provides for a swing bridge, to be a charge upon the State. The bill, when introduced, provided that an excess over the $10,000 should be a charge upon the city of Syracuse. As submitted to me, this provision is stricken out. I think it my duty to withhold my approval from any more bills for construction of swing bridges to be maintained by the State, except when extraordinary circumstances demand their establishment.''

"An act to regulate the mode of writing for, and prescribing the use of remedies for the treatment of diseases."

'' Seeks to regulate how prescriptions for medicine shall be made out, with the view of avoiding mistakes. It is better to leave this matter, as now, to the discretion and good judgment of careful physicians and druggists.''

"An act to prevent the spread of contagious diseases in the city of New York," etc.

'' So much of this bill as is indicated in this title is the same as Assembly bill approved April 27, 1871.''

"An act to authorize Union Free School District No. 1, in the town of Madrid, to borrow money," etc.

'' Unnecessary. General laws sufficient for the case.''

" An act to incorporate the Immaculate Conception Total Abstinence Beneficial Society of Yonkers."

'' Not properly certified. The bill was returned by me to the Legislature for amendment, at their request. The amendments have been inserted; but new certificates of its passage, signed by the presiding officer of Senate and Assembly, since the amendments were adopted, are not appended.''

"An act to incorporate the Clarkson Cemetery."

'' There is a general law for incorporation of rural cemeteries.''

"An act to incorporate the United States Commission and Storage Company."

'' Location of company not fixed by the bill, nor is it subjected to the provisions of the Revised Statutes relative to corporations.''

"An act to authorize the commissioner of highways of the town of Philipstown, in the county of Putnam, to lay out and open a highway, etc."

"General law sufficient."

"An act to incorporate the Expressman's Savings Bank in the city of New York."

"Charter objectionable by report of Superintendent of Banking Department."

"An act to authorize the town of Verona, in the county of Oneida, to elect an additional justice of the peace."

"Additional justice not needed."

"An act to provide for the regulating, grading, curbing, guttering and flagging of certain streets in the city of New York."

"Local authorities have power."

"An act to incorporate the People's Mutual Benefit Association."

"Is, in fact, a life insurance company, and should be organized under and subject to the general laws."

"An act to incorporate the Workingmen's Friendly Society of America."

"The ninth section organizes a Trust Company, with the full powers of such an institution. No such purpose is indicated by the title of the bill."*

"An act to amend chapter 907 of the Laws of 1869, entitled 'An act to amend an act entitled an act to authorize the formation of railroad corporations and to regulate the same,'" etc.

"Reopens all cases, even after final judgment."

"An act to authorize the appointment of a stenographer for the county court and court of sessions of Onondaga county."

"Supervisors have power."

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* Const. 1846, art. 3, § 16.

"An act to amend an act entitled 'An act to incorporate the village of Mohawk,' passed April 16, 1844."[24]

"Second section deprives the legally elected justices of the peace of their constitutional jurisdiction."[1]

"An act to enable the American and Foreign Bible Society to unite and consolidate with the American Baptist Publication Society."

"The bill repealing the act of 1870 has been approved. This bill, if passed into a law, would give rise to much litigation."

"An act to extend the provisions of the act, chapter 113 of the Laws of the year 1853, entitled 'An act declaring Indian river a public highway."

"Language of the bill so careless that it ought not to go upon the statute book."

"An act to provide for the construction of a bridge over Fall creek where it is crossed by Steuben street, in the village of Havana, county of Schuyler."

"Under the reappropriation bill Canal Commissioner has already power to build this bridge."

"An act to amend chapter 92, laws of 1869, entitled an act to provide for the compensation of members of the board of supervisors of the county of Oneida."

"Bill defective; does not describe properly the law to be amended."

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[24] As to the power of the Legislature to limit the jurisdiction of a justice of the peace, see People ex rel. Burby v. Howland (1898), 155 N. Y. 270; People ex rel. Holmes v. Lane (1900), 53 App. Div. 531; and Ex Parte McCollum, 1 Cow. 550.

[1] Const. 1846, art. 6, § 17; jud. art. 1869, § 18.

"An act to incorporate the Port Morris Warehouse and Elevator Company."

"Place of business not fixed. Seventh section makes the company a guaranty and trust company, a purpose not indicated by the title."[j]

"An act for bonding the towns of Hunter and Jewett, in the county of Greene."

"Protested against by taxpayers of Jewett. This town is represented to me as having already a bond debt of $5,000; this bill authorizes a further debt of $40,000; the assessed valuation of property in the town being only $52,000."

"An act to incorporate the National Book Exchange of the City of New York."

"Bill incorporates a book exchange; but the fourth section authorizes the company to deal in all kinds of personal and mixed property."[k]

"An act to provide for improving a public highway in the towns of Scarsdale and Greenburgh, in the county of Westchester."

"Passed in last hours of the session, not printed, so that taxpayers interested had no opportunity to know of it."

"An act to amend an act entitled 'An act to incorporate the Fire Proof Warehouse Company,' passed May 9, 1868," etc.

"Grants very extensive powers, and is in conflict with views I have heretofore expressed against similar bills."

"An act to incorporate the Metropolitan Nautical Institute of the city of New York."

"Corporation not made subject to the general provisions of the Revised Statutes."

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[j] Const. 1846, art. 3, § 16.

[k] Const. 1846, art. 3, § 16.

"An act to amend an act entitled 'An act to amend an act entitled An act to reduce the number of town officers and town and county expenses, and to prevent abuses in auditing town and county accounts, passed May 10, 1845; passed December 14, 1847."

"Inaccurate as to number of the sections amended. Makes an alteration of the law relative to opening highways which is of doubtful propriety, enabling any one interested in a proposed road or supposing himself interested, whether an owner of land adjoining or not, to originate proceedings."

"An act to amend an act entitled 'An act to incorporate the Protectives Number One of the City of Rochester,' passed March 28, 1868,"

"Authorities of the city must have all necessary power in matters proposed to be attended to by this corporation, to wit: the extinguishing of fires and saving of property at fires. This bill increases the capital of a company previously incorporated for this purpose. I can see no necessity for a private corporation having been created at all for such purposes."

"An act to authorize town auditors to raise such sums of money as they may deem necessary to build and keep in repair roads and bridges."

"Powers conferred too absolute and too extensive. No limit to their power of levying taxes; no control by the board of supervisors."

"An act to incorporate the Baywood Land Improvement Company."

"Company not made subject to the provisions of the Revised Statutes."

"An act to authorize the construction of gas-works and the manufacture and sale of gas for the purpose of lighting the village of Gloversville," etc.

"General laws suffice for the purpose."

"An act to lay out and construct a public road or highway in the town of Mount Pleasant, in Westchester county."

"Passed at a late hour of the session, not having been printed. Not asked for by citizens interested."

"An act to authorize the construction of a railroad in and through certain streets in the village of Owego, Tioga county, State of New York."

"Passed at late hours of session; not printed, so that the parties interested had not proper notice."

"An act to incorporate Journeymen Pork Butchers Union Benevolent Society in the city of New York."

"Can incorporate under the general law."

"An act to amend an act entitled 'An act concerning certain vagrants in the city of New York,' passed April 17, 1867."

"Bill, in fact, makes no amendment; the same language is re-enacted."

"An act to provide for laying out and opening and grading a public highway in the town of Newtown, Queens County."

"Local authorities have sufficient power to lay out roads, except in extraordinary cases. Many parties interested are strongly opposed, so that the Legislature is not justified in interfering with the general course and operation of ordinary road laws."

"An act to authorize the commissioners of highway to widen and straighten the church road leading from Port Richmond village to New Springville."

"Case provided for by general laws."

"An act in relation to compensation for stenographic notes of trials had in Court of Oyer and Terminer in and for the city and county of New York."

"The stenographers are employed at an annual salary, and bound to perform the duties under the terms of their present employment; if not, the county authorities have sufficient power in the matter."

"An act in relation to certain taxes imposed and collected in the county of Chautauqua."

" Special alteration of the law for one county only."

"An act for recording notices of pendency of action and certificates of satisfaction of mortgage, on file in the county of Richmond, and for the payment of the costs and expenses thereof, and of the books and materials required for the same."

" Supervisors have power in the matter; Senate bill to same effect not approved."

"An act to amend an act to reorganize the fire department of the city of Albany."

" This bill gives a salary to the Commissioners. They, only a year ago, accepted these places to which no salary was attached; no more reason for salary now than then. The Mayor and many citizens protest against the bill, as an unnecessary increase of expenses of the city."

"An act to amend an act entitled 'An act to incorporate the Industrial Exhibition Company, and to authorize said company to purchase real estate in the city of New York," etc.

" Exempts from State and local taxation all the property of the company; not merely the land it may occupy. Although an enterprise of public interest, and probably of great public benefit, the company, nevertheless, is organized with a view to private profit to its stockholders."

"An act for the erection of a breakwater on the Oswegatchie river improvement, on the west bank of the Oswegatchie river, on the lands of D. P. Woodcock, in the town of Fowler, in the county of St. Lawrence," etc.

"Appropriation for local purposes; not passed by two-thirds vote;[l] has also more than one object,[m] to wit: building the breakwater, and paying damages caused by erection of piers already constructed."

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[l] Const. 1846, art. 1, § 9.

[m] Const. 1846, art. 3, § 16.

"An act to improve the roads and bridge in the county of Wayne."

"Interferes with General Laws as to road taxes in this one county."

"An act authorizing the formation of a separate road district in the town of Jay, county of Essex, and appropriating money therefor."

"Appropriates money for local purposes; not passed by two-thirds vote."[a]

"An act to incorporate the Progress Health Insurance Company of New York."

"There is a general law regulating formation of such companies. This bill authorizes a corporation to be formed without complying with the general law."

"An act authorizing the officers of Cherry Creek Cemetery, in the town of Cherry Creek, Chautauqua county, to take charge of the public burying ground in said town, and to provide for the payment of the expenses of the same."

"First section defective; does not conform to the title; it authorizes trustees of Cherry Creek Cemetery to take charge of 'the cemetery,' not of 'the public burying ground.'"

"An act to amend an act entitled 'An act to equalize the State tax among the several counties of this State," etc.

"Increases the number of State assessors from three to eight, one to be appointed for each judicial district. It is not, in my judgment, probable that the larger board, constituted as proposed, would be any more efficient than the present board of three, while the expense would be greater.''

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[a] Const. 1846, art. 1, § 9.

"An act in relation to the county treasurer of the county of Rensselaer."

'' Bill not only increases his compensation for the future, but applies, so far as accounts with the State are concerned, to the past.''

"An act to incorporate the Lake George Baptist Association."

'' General laws suffice for this.''

"An act to incorporate the Jamestown Savings Bank."

'' Objections of Superintendent of Bank Department concurred in by me.''

"An act to authorize the raising of a fund in aid of the Homeopathic Insane Asylum at Middletown."

''Authorizes a corporation for giving musical and other entertainments for special purpose. Unnecessary.''

"An act concerning certain female habitual drunkards, vagrants and prostitutes in the city of Brooklyn, and county of Kings."

'' Bill defective.''

"An act to incorporate the Mechanicsville Bridge Company, for the purpose of constructing and maintaining a bridge over the Hudson River, between the village of Mechanicsville and the town of Schaghticoke."

''Authorizes unlimited increase of capital.''

"An act to discontinue a portion of a certain road in the town of South Hampton, in the county of Suffolk."

'' Local authorities have power under general laws.''

"An act to incorporate the Gloversville Savings Bank."

'' Objections of Bank Department concurred in by me.''

"An act for the relief of the legal representatives of Peter Robinson."

"Claim already examined and passed upon four times."

"An act for the relief of Jacob Schaub."[25]

"Seeks to make the State responsible for loss of money deposited by claimant in a bank of his own choice, by failure of the bank, simply because he handed the certificates of deposit therefor to State officers, as security for performance of certain contracts."

"An act to authorize the village of Dunkirk to issue its bonds for the purpose of purchasing a steam fire engine, and for other purposes."

"Protested against by citizens. Does not seem necessary."

"An act to repeal section 4 of chapter 70 of the Laws of 1845, entitled 'An act to amend an act in relation to State prisons,' passed May 1st, 1844."

"Unnecessary; section referred to already repealed by section 160, chapter 460, Laws of 1847."

"An act to regulate the sale of patent rights, and to prevent frauds connected therewith."

"Forbids selling of patent rights except by previous license of the county judge. The subject is to prevent frauds, said to be frequently perpetrated in these matters. Policy of substituting the judgment of the county judge for the vigilance of the community in guarding, each one his own interests, very doubtful."*

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[25] As to the power of the Legislature to direct the reimbursement for a loss of public funds occasioned by the failure of a bank, see Mercer v. Floyd, (1898), 24 Misc. 164.

* See L. 1877, chap. 65, patent right note; sustained in Herdic v. Roessler (1888), 109 N. Y. 127.

"An act to alter the commissioners' map of the city of Brooklyn, and to authorize the common council of said city to lay out, open and improve certain streets therein.

"Principal section objectionable; but the second section, closing a street, is protested against on good grounds."

"An act to require the Forty-second Street and Grand Street Ferry Railroad Company in the city of New York, to extend tracks in West Thirty-fourth street and to run cars thereon."

"Form of the bill objectionable. Does not merely authorize, but requires the company to extend its track and to make compensation."

"An act to amend an act to incorporate the Associated Hotel Company."

"By original act stockholders were liable to workmen and other creditors for amounts not paid on their subscriptions. This bill relieves them of this property liability."

"An act to provide for straightening, widening, grading and improving Railroad avenue in the town of Mount Pleasant."

"Not asked for by taxpayers interested."

"An act to amend section 2 of chapter 838, of the session laws of 1866, entitled 'An act to amend an act entitled 'An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes,' " etc.

"Authorizes corporations for 'conducting mercantile and commercial business.' Organization of corporations for such purposes is against public policy, tends to array corporate wealth and power against individual effort, and thus to depress, unduly, individual enterprise. The law authorizing formation of corporations, for various purposes, seems to me to be extended as far now as is consistent with the general good."

"An act in relation to the running of ferry boats by the Green Point Ferry Company across the East River, between the cities of New York and Brooklyn."

"Comptroller of the city has power to regulate this by terms of the ferry lease."

"An act to amend section 1, chapter 472, Laws of 1866, entitled 'An act confirming certain leases that the Seneca nation of Indians, in council assembled, have confirmed and ratified.'"

"Not just to the Seneca nation under our treaties with them."

"An act in relation to highway labor in the counties of Westchester and Richmond."

"If the provisions of this bill, altering the general law as to roads and highways, be desirable, they should be applied to all parts of the State."

"An act authorizing the trustees of the Williamsville Academy to sell the personal and real estate of that institution."

"Regents of the University have power to dissolve the corporation. The trustees can then apply to the courts for instructions as to disposal of the property, if they need any. There are no 'stockholders' of the academy, among which class of persons the bill proposes to divide the proceeds. It is an endowment academy; the money contributed given absolutely for educational purposes."

"An act to amend the charter of the City Loan and Trust Company of New York, passed May 7, 1870."

"This company originally chartered by another name; name changed to present one in 1870; this bill makes it a guaranty and indemnity company, and a warehousing company, with banking powers."

"An act to incorporate the Republic Life Insurance and Trust Company of New York."

"Should incorporate under the general law for life insurance companies."

"An act to authorize the trustee of school district No. 11, in the town of Benton, Yates County, to levy a tax for the payment of money for the erection of a school house in said district, which was destroyed by fire before being accepted by the trustee." —[See note 25.]

" The bill authorizes a special tax to reimburse the contractor who undertook to build the school house, for money expended by him in partial fulfillment of his contract, the unfinished school house having been burned. It is obvious that if, by the terms of his contract, this money is legally due to him, it can be recovered by him without this bill; if it be not due to him, and the building was at his risk, it would be unjust to tax the district to pay this sum to him."

"An act to authorize and empower the board of education of Union Free School District No. 1, in the town of Deerpark, Orange County, to examine and license teachers," etc.

" Confers powers on this board of education not generally possessed by other similar boards, and which is now in the hands of the school commissioner; no good reason for this exceptional law."

"An act to incorporate the New York Coal Exchange, and to confer certain powers upon it."

"Authorizes the company to begin business with only $500 of capital paid in."

"An act to amend the charter of the New York State Loan and Trust Company."

" Gives all the powers of a trust company, including the execution of trusts and the care of moneys under order of courts, etc., and yet none of the usual guards are provided, such as report to and examination by the Supreme Court, etc."

"An act concerning the practice of physic and surgery."

" This bill authorizes the regents of the university to confer the degree of M. D. upon persons who pass an examination before a board of seven censors, to be appointed by the regents; all applicants to be examined in both of the two leading modes of practice, the allopathic and the homeopathic. I am urged to sign it on the ground that it will tend to elevate the profession by subjecting candidates for degrees to a more rigid examination; and that, although degrees can now be conferred by medical colleges and practitioners licensed by medical societies, this degree of M. D. from the regents will be sought after, as giving to the recipient thereof a better standing before the community. This might be so if the regents were prohibited from granting a degree in any case except that provided in the bill. The powers conferred on the regents by this bill are expressly stated to be 'in addition' to those they now possess. They already have the power to grant the degree of M. D. upon different and less exacting conditions than those proposed by the bill. It is clear that it will not do to have two classes of degrees of the same grade and name from the same source. The community could not distinguish between them; so that the proposed object of the bill would not be attained."

"An act amending several chapters, entitled 'An act for the better improvement of highways at Rockland Lake and vicinity,' passed April 17, 1862."

"The references to the various acts to be amended are inaccurate."

"An act to authorize the Comptroller to settle with the commissioners appointed by chapter 454, Laws of 1863, entitled 'An act in relation to non-resident highway taxes upon certain lands in the counties of Essex and Hamilton,' as amended by chapter 654, Laws of 1866."

"Does not leave the Comptroller proper discretion in settling with the commissioners, and pledges, indefinitely, highway taxes hereafter to be collected."

"An act to incorporate St. John's College, Brooklyn."

"Name objectionable, there being already a St. John's College, to wit, at Fordham. Moreover, the Regents of the University can grant a charter under their general powers."

"An act to incorporate the Jefferson Medical University, and to authorize the establishment of a dispensary and hospital in connection with the same."

"Contains the extraordinary provision that a medical college may confer on its students the degree of doctor of laws. The Regents of the University can grant a proper charter. No law is needed."

"An act to amend an act entitled 'An act relating to the support of the poor of Rensselaer county,' passed April 13, 1860," etc.

"The late superintendent of the poor was very recently removed for doing what this bill would authorize. What was deemed a salutary restriction then, it is wise to leave in force."

"An act authorizing a culvert or sewer to be built and constructed under and across the Cayuga and Seneca canal at the village of Waterloo, Seneca county."

"Bill defective in its language; speaks of 'commissioners' merely, not Canal Commissioners; it is believed, moreover, that work can be done, if needed, without a special law."

"An act to incorporate the Co-operative Savings and Loan Association."

"Language of bill very vague and indefinite."

"An act to incorporate the Guilderland Center Turnpike Company."

"General laws provide for these matters."

"An act in relation to costs in surrogates' courts."

"Objectionable, as extending still further than it exists now, the power of the court to allow counsel fee and extra allowance, to be paid out of the estate, in cases of litigation about a will or litigation in any of the proceedings in administering or settling an estate. It is a power that may be greatly abused and may encourage needless litigation."

"An act to incorporate the National Improvement Company, to be located in the city of New York."

"Power too extensive."

"An act to incorporate the New York Financial Association."

"Power given to buy and sell stocks on commission; provisions of Revised Statutes relative to corporations not made applicable; no provision for distribution of capital among subscribers and no liability clause."

"An act to extend the Rossville road, in Richmond county, from the Amboy road to the southerly beach."

"The powers of commissioners of highways and their mode of proceeding are prescribed by the general laws; this bill, for one special case, directs them to dispense with the usual preliminary proceedings, and authorizes them to acquire the right of way by a method other than the usual one."

"An act to further amend an act entitled 'An act to incorporate the Insurers' Indemnity Company of the city of New York,' passed April 22, 1868," etc.

"An amendment has been made every year since the company was chartered, and these cannot be necessary."

"An act to incorporate the Commercial Traveller's Association of New York City."

"Authorizes a general commercial business and dealing in buying and selling every kind of personal or mixed property."

"An act to incorporate the Veteran Association Corcoran Irish Legion."

"Can incorporate under general laws."

"An act authorizing the justices of the Supreme Court resident in Kings County, and the county judge of Kings County, to appoint messengers, doorkeepers and attendants."

"Bill not adequate to the public needs; the judges prefer the law as it stands."

"An act to amend an act entitled 'An act for the incorporation of villages.'"

"Would conflict with a bill approved May 1, 1871."

"An act to incorporate the village of Memphis, in the county of Onondaga."

"General law provides for all proper cases."

"An act to change the name of the village of Harts Falls, in the county of Rensselaer."

"No proof that it is desired by inhabitants. Some have protested."

"An act to incorporate Monhagen Hose Company Number One, of Middletown."

"Middletown has power to organize a fire department."

"An act to incorporate the Teutonia Singing Society of Winfield, Queens County."

"Can incorporate under general laws."

"An act to incorporate the National Security and Trust Company."

"An act to incorporate the International Employment Guaranty and Deposit Company."

"An act incorporating the Equitable Loan and Trust Company."

"An act to incorporate the Continental Loan and Trust Company."

"An act to incorporate the Nassau Loan and Security Company."

"An act to incorporate the Manhattan Indemnity and Loan Company of the city of New York."

"An act to incorporate the International Trust and Banking Company."

"An act to incorporate the South Brooklyn Loan and Trust Company."

"An act to incorporate the Commercial Trust and Banking Company of New York City."

"An act to incorporate the Anglo American Loan and Trust Company."

"An act to incorporate the Johnstown Loan and Trust Company."

"An act to incorporate the Albany Loan and Trust Company."

"An act to incorporate the Mutual Trust Institution of New York."

"An act to incorporate the Bankers' Loan and Trust Company of the city of New York."

"An act to incorporate the Eagle Trust Company of New York."

"An act to incorporate the Island City Trust Company."

"An act to incorporate the Mechanics' Savings Bank of the City of Troy."

"An act to incorporate the Long Island City Savings Bank."

"An act to incorporate the Sixpenny Savings Bank of the city of Albany."

"An act to incorporate the Farmers' and Mechanics' Savings Bank in the city of New York."

"An act to incorporate the Seventeenth Ward Savings Bank of the City of New York."

"An act to incorporate the Grand Street Savings Bank of Brooklyn."

"An act to incorporate the Washington Savings Bank of Brooklyn."

"An act to incorporate the Phoenix Trust Company of the City of New York."

"An act to incorporate the New York City Life, Policy, Guaranty, Loan and Trust Company."

"Trust companies, savings banks, and other financial companies; submitted to Bank Department; objections found by it to the several charters, in which objections I concur."

"An act for the relief of the New York Tunnel Company."

"No information as to where the company is, nor when organized, the bill making no reference to any former act."

"An act to amend an act entitled 'An act to simplify and abridge the practice, pleadings and proceedings of the courts of this State."

"This bill, which, as appears by the records, met with no opposition either in the Senate or Assembly, receiving twenty votes in Senate and ninety in Assembly (no nays), contains, in my opinion, several objectionable provisions, to which public attention has been sufficiently called."

"An act to incorporate the International Improvement and Loan Company."

"The third clause is very loose, and confers extraordinary and very varied powers."

"An act for the relief of Luther Wright and William O. Hubbard."

"I cannot consent to approve a bill which reopens a case which, it seems clear to me, has been fully examined and passed upon. The claimants have had three hearings before, and judgment has been rendered against them."

"An act to incorporate the New York Stock Exchange," etc.

"Bill defective. Names as the first officers of the corporation the officers of another association who are not even named among the corporators of the association created by this bill."

"An act to abolish the office of Superintendent of Canal Repairs and to give additional powers to the Canal Commissioners," etc.

"This bill substantially repeals the law of 1870 and, it seems to me, is not just to the Canal Board. The first year of canal management, under last year's law, was necessarily, from causes well understood, a year of extraordinary expenditure. The present one ought to be, with harmony of action among the members of the board, one not only of reduced expenditure, but of increased revenue. The Canal Commissioners are members of the Canal Board, and not only have a voice in it, but, as clearly appears by the official report of Comptroller Allen, Lieutenant-Governor Beach, and Attorney General Champlain, dated June 30th, 1870, they have now, separately from the board, very full powers as well as very great responsibility. The repairs and all the ordinary expenditure upon the canal must, under the existing law, be made by and under the direction of the Commissioners; and although the superintendents are appointed by the Canal Board, the Commissioners have power to remove them for incompetence, unfaithfulness or neglect of duty.

Inasmuch as the Commissioners already possess such full powers, I am of the opinion that the policy embodied in the law of last year, giving the Canal Board certain other powers, should be tested by a further trial, before depriving the board of the powers of appointment and supervision thereby conferred."

"An act for the relief of William A. Sackett and Franklin Gage."

"This is a very stale claim and belongs to a class that has never been favored. On consultation with the State Engineer, I am satisfied it is not right to sign the bill, which was introduced and passed the last day of the session, never printed, referred or discussed."

"An act to aid and expedite the construction of unfinished railroads in this State, which are intended to connect the chain of northern and western lakes and rivers with tide water, or to develop the resources of improved portions of the State."

"I intimated, early in the session, to the friends of this bill, in answer to an inquiry, my views. Nevertheless, I have, at their request, delayed action upon it until this time, in order to give every opportunity to bring forward arguments in support of it, and have heard, attentively, all they have to say. The purpose of the bill is to tax the people of this State two millions of dollars, one-half this year and one-half in 1872, and to divide the proceeds of the tax about equally between the Midland Railroad Company (commonly so called) and the Adirondack Railroad Company, to enable them to complete their respective roads. A very strong pressure of opinion, favorable to the bill, from many quarters, has been brought to bear upon me by those directly interested in and to be affected by these railroads and by the proposed State donation. I realize, as fully as any one, the importance of the roads to those who live along the respective routes and to the State at large; and I sympathize especially with those who, through their town and municipal authorities, have bonded themselves heavily to aid in the construction of either road. I cannot, however, allow my sympathies to control my official judgment. I do not believe the people of the State are willing to be taxed two millions of dollars in aid of these two or any other railroad corporations. Nor do I believe it right that they should be so taxed. There is no unappropriated money in the State treasury out of which contributions can be made to railroad or other private corporations. Whatever money is to be given must be taken out of the pockets of the people, by a direct tax levied especially for that purpose. It is not a purpose connected directly with government; it is a private purpose, the profits arising from the investment of the money, if any, going to the stockholders, although incidentally, benefit may result to the districts through which the roads run and to the State at large. The State government has no moral right to tax the whole people in aid of these roads; at all events, not without their express consent. Not a town along the line of these or other roads can tax itself for a similar purpose, without the consent of a majority of those representing a majority of the taxable property in the town; yet this bill proposes to tax the whole State, without even submitting the question to a vote of the people.

The Constitution (section 9, article 7) forbids the loaning or giving the credit of the State, in any manner, in aid of any individual, association or corporation. The State cannot even create a debt, and with the money borrowed promote any single work of a public character, without the consent of a majority of the people, expressed through the ballot box.[o] It ought not to (and in my judgment it cannot, without violating the spirit of the Constitution) tax the people in aid of any railroad or other private corporation; certainly not, without a like consent. I know there are many, who have always been opposed on principle to granting State aid to railroad or other corporations, who feel that perhaps an exception should be made in favor of the two roads for whose benefit this bill has been passed, that the sum now asked for is small, compared with the great result of securing the early completion of the Midland road and the opening of the Adirondack region, and that the expenditure of two millions of dollars will be soon repaid, in the addition insured to the general prosperity and wealth of the State. We must not, however, shut our eyes to the inevitable consequence of yielding the principle, by making an exception in this instance. It would justify and encourage, in the future, applications from every quarter for similar aid. Every road hereafter to be built would expect to receive it, and the demand upon the State treasury would be almost without limit.

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[o] Const. 1846, art. 7, § 12.

I cannot, therefore, sign this bill, which imposes a tax of two millions of dollars upon the already heavily taxed people of this State, without their consent being first asked for and given."

December 29.

Veto of the following bills:

"An act in relation to the doubling of locks on the western division of the Erie Canal."

" This work was let to the lowest bidder. The work is still incomplete, and the bill proposes that the Canal Commissioners shall have power to increase the prices for work named in the contract, leaving the contract otherwise in full force; so that the contractors, having excluded their competitors by a low bid, would have the benefit of the higher prices named in the unsuccessful proposals. My attention having been recently called to the question of the constitutionality of such legislation, which is not without precedent, I have come to the conclusion that it is in violation of section three of article seven of the Constitution — see last sentence thereof."

"An act in relation to removing wall benches and constructing vertical and slope walls between Butternut Creek feeder and lock forty-seven of the Erie canal."

" Not approved, for same reasons given in relation to bill immediately preceding."

"An act to provide for a special election to fill the vacancy in the 16th assembly district of the county of New York, caused by the resignation of James Irving."

" No necessity for bill, the resignation being made about the close of the session and no extra session to be called."

"An act to amend an act entitled 'An act to provide for the improvement of the navigation of the Racket river and of the hydraulic power thereon, and to check freshets therein,' passed April 2d, 1869."

"Amended on last day of session unexpectedly to parties whose private interests were affected, and without a chance for them to be heard."

"An act to amend an act entitled 'An act to authorize the town of Wilna in the county of Jefferson, the town of Diana in the county of Lewis, and the town of Edwards in the county of St. Lawrence, to issue bonds and subscribe and take for said towns, capital stock in the Black River and St. Lawrence Railway Company,' passed April 2d, 1868."

"Repeals a condition under which subscriptions were originally made, and is unjust to taxpayers."

1872. JANUARY 2. LEGISLATURE, NINETY-FIFTH SESSION.

JOHN T. HOFFMAN, Governor.

ANNUAL MESSAGE.

EXECUTIVE CHAMBER,
ALBANY, *January* 2, 1872.

TO THE LEGISLATURE.—It is my duty to make known to you the general condition of the State, and to recommend to you such matters as I judge expedient.

STATE DEBT.

The unpaid principal of the war bounty debt was, on the 30th September last ($16,887,206.57) sixteen millions eight hundred and eighty-seven thousand two hundred and six dollars and fifty-seven cents. This portion of our debt will, by the annual tax provided by the terms of the act authorizing the loan, be paid, in full, in about five years. It was contracted and is to be paid in our present legal tender currency.

The residue of the State debt, which amounts to ($12,595,495.95) twelve millions five hundred and ninety-five thousand four hundred and ninety-five dollars and ninety-five cents, was contracted before the war, in gold, and the honor of the State and good faith demand that it shall be paid, both principal and interest, in gold coin. It is to be paid (except $48,860.11, loan of credit to the Long Island Railroad) out of revenues pledged for the purpose, and not by taxation, unless the sinking funds ' shall prove insufficient to enable the State, on the credit of such funds, to procure the means to satisfy the claims of the creditors of the State as they become payable.'

Of this last-mentioned species of debt ($2,257,900) two million two hundred and fifty-seven thousand and nine hundred dollars of principal will be due on the 1st of July next, and ($847,500) eight hundred and forty-seven thousand and five hundred dollars of principal will be due on the 1st of January, 1873. The Comptroller is of the opinion, in which I concur, that there will be no difficulty in obtaining the means of meeting these payments, on the credit of the sinking funds, as authorized by the Constitution.[a]

The entire State debt was, on the 30th of September last, ($29,482,702.52) twenty-nine millions four hundred and eighty-two thousand seven hundred and two dollars and fifty-two cents, the amount of principal paid in the last year being ($2,926,441.74) two million nine hundred and twenty-six thousand four hundred and forty-one dollars and seventy-four cents.

TAXES.

The State tax levied the past year is five mills and seventy-nine one hundred and twentieths of a mill. Of this tax, two mills were required for the annual payment on the war bounty debt; one mill and a quarter for the support of the public schools; three-eighths of a mill to meet payments for work on the new Capitol; seventy-nine one hundred and twentieths of a mill for canals; and one mill and three-eighths of a mill for general purposes. The total yield of the State tax is eleven millions six hundred and thirteen thousand nine hundred forty-three dollars and sixty-one cents.

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[a] Const. 1846, art. 7, §§ 1, 2, 3; Am. 1854; also § 12.

NEW CAPITOL.

The new capitol commissioners report to me that of the six hundred and fifty thousand dollars appropriated by the Legislature at its last session, they have expended three hundred and forty-three thousand six hundred and thirty-one dollars and thirty-one cents up to the twenty-second day of November last; making, with what has been previously reported, about two millions thus far expended on the construction of the building, independent of about six hundred and fifty thousand dollars paid for land.[1]

SALT SPRINGS.

The quantity of salt from the Onondaga salt springs, inspected during the last fiscal year, was eight millions five hundred and seventy-nine thousand one hundred and ninety-three bushels. This shows a decrease of production, compared with the previous year, of two hundred and seventy-two thousand and fifty-four bushels. The net revenue to the State has been twenty-six thousand six hundred and fifty-six dollars and seventy-nine cents, which is seven thousand two hundred and fifty-four dollars and twenty-eight cents less than that of the previous year.

BANKS.

On the first of October last, sixty-nine banks were doing business under the banking law of this State. During the fiscal year circulating notes to the amount of forty-seven thousand seven hundred and seventy-seven dollars have been destroyed by the department. Twelve banks have been credited with lost circulation to the amount in all of sixty-four thousand seven hundred and twenty-five dollars; the time for redeeming the same, after the usual legal notice, having expired.

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[1] Chapter 736, approved May 15, imposed a tax of one-half of one mill for the purposes of the new capitol.

The amount of circulation outstanding, including that of incorporated banks, banking associations and individual bankers, was, on the 1st of October last, two millions one hundred and forty-one thousand four hundred and thirty-five dollars and fifty cents. Of this amount, the sum of one million three hundred and eighty-three thousand five hundred and twenty-five dollars is secured by deposits of stocks, mortgages and cash. The residue, being circulation issued by incorporated banks in existence prior to the passage of the general banking law, is, of course, not secured by any deposit in the Bank Department.

SAVINGS BANKS.

There were, on the 1st of July last, one hundred and forty-three savings banks doing business in the State, with assets to the amount, in the aggregate, of two hundred and sixty-six millions two hundred and fifty-three thousand five hundred and ninety-four dollars. These assets may now be estimated, upon the ratio of increase of the year before, at two hundred and eighty millions of dollars. The number of persons having deposits in these institutions was, on the 1st of January, 1871, seven hundred and twelve thousand one hundred and nine.

I ask your especial attention to the necessity of being very cautious in the enactment of charters for savings banks. Some failures have occurred among this class of institutions during the past year. Being intended to induce saving habits among those of small means, by enabling them to obtain interest on the sums which they can, from time to time, lay aside from their daily earnings, it is the duty of the Legislature to provide in their charters every possible safeguard for the protection of the depositors. The object kept in view should be security more than high interest.

At my instance (Senator Palmer, then chairman of the Senate Committee on Banks, cordially co-operating with me), a law was passed at the legislative session of 1869 (chapter 213 of the laws of that year) requiring that all persons desiring to organize a savings bank should execute a certificate, setting forth the name of their projected institution, its intended place of business, the name, residence, occupation and post-office address of each member of the association, and containing a declaration from each one of them that he is willing to accept the duties of a trustee in such institution; and requiring that such certificate, with a copy of the proposed charter be filed with the Superintendent of the Banking Department, at least sixty days before the annual session of the Legislature. The law provides also, that notice of intention to organize such an institution, giving the particulars contained in the certificate, shall be published in a newspaper of the neighborhood where it is proposed to be established, for six weeks. It then makes it the duty of the Superintendent of the Banking Department to transmit to the Legislature at its next meeting, a report concerning the expediency of incorporating each one of such proposed institutions. Every legislative committee to whom a bill for incorporating a savings bank shall be referred, which has been introduced otherwise than in the manner and with the preliminaries above described, is, by the terms of this law, required to report against the passage thereof. Of course, this law may be disregarded by a subsequent Legislature; but I recommend a strict compliance, on your part, with its provisions, as calculated to avoid a needless increase of these institutions and to guard against carelessly framed charters. I recommend to your consideration the propriety of restricting, by a general law, applicable to all savings banks, the amount which may be held on deposit for any one depositor, to a moderate sum.* Those who deal in large amounts are usually capable of providing investments for themselves. It is not right that the funds of this latter class of persons should be mingled with those of less means, whose circumstances require a peculiar class of institutions, and for whom, especially, savings banks were created.

The tendency of late years to careless legislation in respect to savings banks and other moneyed incorporations, is shown by the fact that during the three years of my administration, I have found myself obliged to refuse my signature to sixty-eight bills for the incorporation of, or increasing the powers of savings banks and other moneyed institutions under various names.

In connection with this topic, I call your attention to article 8, section 1 of the Constitution, providing that "corporations shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the Legislature, the objects of the corporation cannot be obtained under general laws." Of late years there has been a tendency to overlook the intent of this limitation upon legislative power. It is true, the judgment of the Legislature is to decide whether, in any special case, they are justified in disregarding the general prohibition. This discretion, however, should be exercised not arbitrarily, but in harmony with the purpose and intent of the whole section; which was, obviously, to take away from the Legislature the right of creating corporations by special act, except where it was very clear that the object could not be obtained under general laws.

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* See *post*, p. 530, **for statutes limiting individual deposits in savings banks.**

INSURANCE DEPARTMENT.

The number of insurance companies subject to the supervision of the Insurance Department was, on the first day of December, 1871, 238, as follows:

New York joint stock fire insurance companies	84
New York mutual insurance companies	10
New York marine insurance companies	9
New York life insurance companies	40
Fire insurance companies of other States	53
Marine insurance companies of other States	2
Life insurance companies of other States	30
Casualty insurance companies of other States	3
Foreign insurance companies	7
Total	238

The total amount of stocks and mortgages held by the Department for the protection of policy holders of life and casualty insurance companies of this State and of foreign insurance companies doing business within it, was eight millions fifty-one thousand one hundred and eighty-five dollars, as follows:

For protection of policy holders generally in life insurance companies of this State	$4,104,035.00
For protection of registered policy holders exclusively	2,342,650.00
For protection of casualty policy holders exclusively	4,000.00
For protection of fire policy holders in foreign insurance companies	1,300,500.00
For protection of life policy holders in foreign insurance companies	300,000.00
Total deposit	$8,051,185.00

The Superintendent of the Insurance Department estimates that, toward reimbursing the loss by the fire at Chicago, companies organized under the laws of this State (not including those of other States and countries doing business in this State) will contribute over twenty millions of dollars.

STATE PRISONS.

The Comptroller's report will show, in detail, the earnings and expenses of the State prisons during the past year. The condition of our prisons is not satisfactory. Improvement can be secured, in my judgment, only by an amendment to the Constitution,[b] which shall concentrate responsibility for their management.[2]

I visited, as usual, all the prisons during the past year, for the purpose of hearing applications from the convicts for pardon or commutation of punishment. More than eight hundred applications for pardon or commutation have been made to me during the year. Eighty-four (84) pardons, twenty-nine commutations and five reprieves have been granted. I shall, in a few days, submit to you, as has been my practice every year, a statement of the particulars of these cases, including the reasons which, in each instance, have influenced my action.[3]

CHARITIES AND ASYLUMS.

The annual report of the Commissioners of Charities will give detailed information of the condition of the several State charities. I trust you will continue to provide for the early completion of the State lunatic asylums now being constructed, so as to afford additional room for the insane poor; to the end that, within a short period, all of this class may be removed from the county poor-houses. I again recommend, as I did last year, an inquiry into the condition of pauper children in the several counties, with a view to providing for their removal, if found expedient, to proper asylums.

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[b] Const. 1846, art. 5, § 4; see am. 1876.

[2] The Legislature adopted a concurrent resolution proposing a constitutional amendment creating a board of managers of prisons, to be composed of five members appointed by the Governor and Senate for a term of ten years. The board was to be given general supervision of State prisons, and such supervision of other penal and reformatory institutions as the Legislature might prescribe.

[3] See special message of February 1, transmitting the report as to pardons, etc.

EDUCATION.

The following statistics have been furnished me by the Department of Public Instruction, for the fiscal year ending September 30, 1871:

Number of children attending Public Schools	1,027,089

Total receipts, including balance on hand, September 30th, 1870	$10,658,576.87
Total expenditures	9,588,356.37
Amount paid for teachers' wages	6,678,377.51
Amount paid for school houses, repairs and furniture	1,587,276.39
Estimated value of school houses and sites	23,613,201.00

Number of persons attending normal schools	5,129
Total number of school houses	11,721
Number of teachers employed for the full legal term	17,828

For particulars and for suggestions relating to the administration of our Common School system, you are respectfully referred to the annual report of the Superintendent of Public Instruction, under whose care the educational affairs of the State have been so ably administered. I ask for the schools the most liberal legislative encouragement.

STATE MILITIA.

The State Militia, known, now, as the "National Guard of the State of New York," numbers about twenty-four thousand officers, non-commissioned officers and privates. The details will be made known in the report of the Adjutant General. This valuable force, essential to the security of public order, ought to be generously sustained by the Legislature. A contract has been made, in accordance with authority vested in the Governor by the law of last session, for supplying the force with breech-loading rifles.

The Adjutant General has made very satisfactory progress in obtaining the adjustment and allowance of claims of the State against the general government for expenditures in the late war. At the time he came into office, the balance of the claims which had then been presented to the accounting officers of the treasury of the United States and were on file with them, unsettled, was $932,132.82, of which it had been estimated not more than fifty per cent. could be recovered, owing to informalities of vouchers, and irregularities occurring in the hurry of the times when the expenditures were made; and it was suggested that the Comptroller should employ a special agent for the adjustment of these claims, to be compensated by a percentage upon the amount which should be recovered. The Adjutant General, with my approval, placed the matter in the special charge of Colonel Stonehouse, the Assistant Adjutant General, who was familiar with the origin of the claims, and detailed Captain Butler, of the Inspector General's Department, to assist him. There has been recovered already the sum of $622,279.10, with the well-assured prospect of an early adjustment of the whole balance left unsettled on the 1st of January, 1869, (except certain items of interest on temporary bonds issued by the State which will require Congressional action), and the prospect also of establishing the validity of further claims upon the government. Additional claims to the amount of $364,107.07, have already been presented to the Treasury department, and others to about the same amount will very soon be ready for presentation. The Legislature, at its last session, passed a concurrent resolution, authorizing me to appoint a special agent to prepare and collect these claims, and to award to him such a percentage of the amount collected as I might deem just and proper. I have done nothing under this resolution, being satisfied that the claims can be adjusted and collected quite as rapidly through the clerical force of the Adjutant General's office, and, of course, at much less cost to the State.[4]

QUARANTINE, ETC.

During the past year, 227 vessels arriving at the port of New York have been quarantined on account of sickness which had occurred on board of them. Upon these vessels, at their port of departure, on the passage, and after their arrival at quarantine, there were 729 cases of contagious and infectious diseases and 109 deaths.

During the quarantine season, to wit, from the first day of April to the first day of November, 466 vessels, which arrived from ports infected with yellow fever, were detained in the lower bay for observation. During the same period, 542 vessels from suspected ports were examined at lower quarantine, and placed under observation for a period of from two to five days.

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[4] Chapter 91, passed March 7, amended the Military Code of 1870 by striking out the word "white" from the first section, which described the persons subject to military duty.

By chapter 517, passed May 4, the Adjutant General was authorized to adjust claims for services and expenses during the war of 1812, and issue certificates therefor, as provided by chapter 597, L. 1857; but the certificates were not to create any obligation against the State.

Chapter 699, passed May 14, authorized the establishment of a rifle range for the use of the first and second divisions of the national guard.

These constitute the total number of vessels detained during the year beyond the time actually necessary for examination. Out of this number, seventy-five discharged their cargoes under quarantine, being but little over one per cent. of the whole number of arrivals from foreign ports during the year.

Seventy of the vessels thus detained were found to have had cases of yellow fever on board, and from these, eighteen patients were sent to West Bank hospital. Besides these, 205 cases and fifty-one deaths from this disease had occurred on board of these vessels, either at their port of departure or during the passage.

For the five years, ending December 31st, 1870, the total number of vessels which arrived with small-pox on board, was one hundred and forty-two; while, during the past year, there have been one hundred and forty-seven vessels, having on board an aggregate of 80,428 persons who had been exposed to this disease during the passage. The number of cases of small-pox reported, to have occurred on these vessels, was three hundred and forty-two, of which two hundred and ninety-three were taken to hospital from quarantine. Of these, owing to the crowded state of the municipal institutions on Blackwell's Island, it was found necessary to send a number of patients suffering from small-pox to West Bank hospital.

Seven vessels only have had cases of ship fever on board during the past year. On these, the number of persons exposed to the disease was 3,778, of whom eight were sent to the fever hospital on Ward's Island.

Three vessels from infected districts have had cases of cholera on the passage to this port; and from these, fifty-two patients suffering from the disease were treated at the West Bank hospital. The total number of cases of cholera occurring among the passengers and crews of these vessels, was 156; and the number of persons exposed to the disease, 1,432. Of these, forty-three died at sea and twelve in quarantine.

At the West Bank hospital the total number of patients suffering from cholera, small-pox and yellow fever, received during the past year, was 132, of whom 109 recovered and twenty-three died.

The absence of buildings upon the upper structure at West Bank, for the reception of persons who have been exposed to contagious and infectious diseases during the voyage to this port, was temporarily provided for by the transfer of the steamships Delaware and Albany, from the general government to the quarantine department. These vessels were anchored at quarantine in the month of September, and in the case of the steamship Franklin, which arrived on November 11th, with cholera on board, were of the greatest utility in affording facilities for the immediate transfer of the passengers from the infected vessel. The favorable results which followed this transfer, are said by the health officer, to prove the importance of completing at once, the structures contemplated at West Bank.[5]

The foregoing statistics demonstrate the necessity for a thorough administration of quarantine laws. The immunity which the city and State of New York have enjoyed during the past year from the introduction of contagious and infectious diseases from abroad may justly be ascribed to the precautions adopted. All abuses, if any be found, should be remedied, but the inconvenience to a few, by the detention imposed upon only one vessel out of a hundred, is not to be weighed against the protection afforded to the people in the cities of New York and Brooklyn, and of the State, against infectious diseases.

There have been for many years, and under all administrations, complaints in the press against the health officer, and also against the harbor-masters of the port of New York. No proof has been adduced before me of maladministration on the part of the present officers. In one instance, prior to December 15, 1871, charges were preferred against a harbor-master, which were withdrawn. On the 15th of December, 1871, charges were preferred in another case, which are now under examination. In the case of the health officer, one complaint has been laid before me. Although the law gave me no power in the matter, the health officer promptly responded to my request for explanations; the complaint was found to be connected, not with his office proper, nor with his fees, but with certain rates established for contributions to the support of the hospitals at quarantine; and the injustice complained of was promptly cured. Under the law, as it was established in 1863, and as it now stands, the Governor has no power to remove the health officer (and appoint another), even after a formal investigation, during the recess of the Senate; the period of the year when, if ever, abuses are likely to occur. I recommend that the Governor be empowered to appoint the Health Officer and Harbor-Masters, including the Captain of the Port, without the consent of the Senate; and to remove them, or any of them, at pleasure. A prompt remedy would then be provided against abuses, without delay incident to a formal investigation.

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[5] Additional quarantine buildings at West Bank were provided for by chapter 733.

In the single instance of the presentation to me of charges against the health officer, I took the occasion, in referring the matter to the Commissioners of Quarantine, to request them to inquire into alleged abuses in quarantine administration, giving merchants and others opportunity of being heard. I have received their report, dated December 11th, 1871, which, with a communication from the health officer relating thereto, will be duly transmitted to the Legislature for its information.[6]

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[6] See special message of January 3, transmitting report of quarantine commissioners as to charges against the health officer.

It is proper to say, that if citizens who know of and can prove official misconduct on the part of public officers, fail to present the charges and proofs to the Governor, the responsibility for continued abuses rests upon them. The Governor, in such matters, acts in a quasi-judicial capacity, and he cannot, any more than can a court, entertain charges made simply through the public press.

Nor should it be forgotten, that if extra compensation is paid to harbor-masters, it may be too often due to the eagerness of owners and consignees of vessels to get the advantage, one over another, in the occupancy of wharves. The Governor is always ready to do his duty, and to remove a guilty party when he has the power. Merchants and others fail to do theirs, when any of them pay a bribe to a public officer, or neglect to expose and bring to justice whoever demands or accepts one.

I recommend a thorough examination of the official acts of the health officer and harbor masters, and such amendments to existing laws as may be necessary to put an end to such evils as may be shown to exist.

IMMIGRATION.

The number of arrivals of immigrants in the port of New York this year is two hundred and twenty-nine thousand, an increase, as compared with last year, of seventeen thousand.

REVISION OF STATUTES.

A report from the commissioners for revising the statutes may be expected at an early day in the session, showing what progress has thus far been made in their work.

CANALS.

The surplus revenues of the canals, for the past year, have been nearly double those of the previous year, although, for four months of the year 1870, the former higher rates of toll prevailed; the contribution to the sinking fund, for the fiscal year ending 30th September last, being $981,588.68 against $569,974.61 contributed the year before. The expenditures have been materially reduced. The official reports of the Comptroller and Auditor will show the details of expenditure and revenue. It is the unanimous testimony of those engaged in business upon them that the canals are in better order than at any previous period. My opinions as to the true policy of the State, with reference to its canals, have been so fully expressed in three successive annual messages, that it is not necessary here to repeat them. The policy of low tolls, which, when first recommended, met with strong opposition, is now, by general consent, admitted to be wise. The season of navigation of 1871 was fifteen days shorter than that of 1870, yet there was an increase of tolls to the extent of $487,722.78.

I have received a letter from the President of the United States calling my attention to the twenty-seventh article of the recent treaty between Great Britain and the United States, which article is in these words, to wit:

"ARTICLE XXVII.—The government of her Britannic majesty engages to urge upon the government of the Dominion of Canada to secure to the citizens of the United States the use of the Welland, St. Lawrence and other canals in the Dominion, on terms of equality with the inhabitants of the Dominion; and the government of the United States engages that the subjects of her Britannic majesty shall enjoy the use of the St. Clair Flats canal on terms of equality with the inhabitants of the United States, and further engages to urge upon the State governments to secure to the subjects of her Britannic majesty the use of the several State canals connected with the navigation of the lakes or rivers traversed by or contiguous to the boundary line between the possessions of the high contracting parties, on terms of equality with the inhabitants of the United States."

The President requests such legislation on the part of this State as may be necessary to carry out, on our canals, this provision of the treaty. My impression is that nothing exists in our State laws, now, to forbid the subjects of another country using our canals on terms of full equality with the citizens of the United States. I recommend an inquiry on your part on this point, and the prompt passage of any laws which may be necessary for the fulfillment of the undertaking made by the Federal government.

GENERAL RECOMMENDATIONS.

The disastrous fire at Chicago destroyed the valuable public law library of that city. It was always open to the free use of members of the bar from other States, and contained complete sets of the Reports of this State and of its Statutes, as well as those of other States and of Great Britain. Upon being informed of this loss by a committee of the bar of Chicago, engaged in the work of restoring the library, and upon their application for such assistance as this State could give, I took the responsibility, in view of the intimate business relations existing between the States of Illinois and New York, of causing to be sent to them the statutes, the reports and the Digests of this State, complete, as a donation from New York, knowing that the need was pressing for the work of restoration being promptly effected. In doing this, I was careful not to incur any liability in behalf of the State. I, nevertheless, respectfully ask that you make an appropriation to cover the cost of this gift. Some of the books having been furnished by the State Library, from extra copies in their possession, the total amount expended will not exceed sixteen hundred dollars.[7]

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[7] The supply bill, chapter 733, appropriated $1,600 for the expenses incurred by the Governor in furnishing books to the Chicago Law Library as stated in the message.

Full rights of inheritance are accorded to the children of American male citizens, without reference to the nationality of the mother, although the children be born abroad; while the children of an American woman married to an alien, are, if they be born abroad, denied like rights. I recommend that the disability of the latter class of persons to inherit be removed by Statute.[8]

I suggest, for your careful consideration, especially in view of the several treaties made between the United States and foreign governments, in respect to naturalization and expatriation, whether it would not be wise to remove all disabilities of aliens relating to the acquisition, possession and transmission of real estate. In several of the States of the Union these disabilities no longer exist, and in England they were removed by statute, passed May 12, 1870, the day before the date when the treaty between England and the United States, relating to naturalization, was signed. If you should pass a law removing all these disabilities, the suggestion last made, with reference to children born abroad of American women, will have become unimportant.

I recommend to your consideration the subject of alleged abuses under the referee system in our courts, with a view to providing a remedy, by law, for such abuses as may be found to exist.

The statutes providing for the election of Senators, in case of vacancies occurring otherwise than by expiration of term, are defective. The defect was brought to public notice by the death of Senator Blood, just before the last session of the Senate. I called the attention of the Legislature in my last annual message to the necessity of amending the laws in this respect, but they failed to supply the defect. I recommend prompt action by you on this subject.[9]

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[8] The subject of inheritances by foreign born children of American women, was included in chapter 120, passed March 20, which authorized the descent of real estate to female citizens of the United States and their descendants, notwithstanding their marriage with aliens. This subject was afterwards included in the Real Property Law, L. 1896, chap. 547, sec. 6. See the act of Congress of March 2, 1907, relative to expatriation, and which declares the status of an American woman who marries a foreigner, and of the children of such a marriage.

I recommend, as I did last year, the putting an end, by law, to the hardships and injustice frequently inflicted upon persons who are detained as witnesses to the commission of crime. The suffering resulting from this, especially in cities, is very great and extends to many unfortunate persons, who are too poor to give security for their appearance to testify. The law should provide that no person shall be detained in prison as a witness in criminal cases beyond a specified time, and that, if the trial be postponed beyond that time on the motion of the prisoner, it shall be only on condition of his consenting that the testimony of the witness may be taken *de bene esse,* as in civil cases. It may be urged that the people may not be ready to bring on a trial, and may thus, in some cases, lose the benefit of the witnesses altogether. It is better so, than to have innocent persons suffer imprisonment in order that even the guilty may be convicted.

I recommend, for the third time, that power be conferred upon the Oyer and Terminer, or upon the Supreme Court at General Term, to grant new trials upon the merits or upon newly discovered evidence, in cases of conviction before the Oyer and Terminer. The courts of sessions, which are inferior tribunals, have this power in cases of conviction before them. A person wrongfully convicted in the Oyer and Terminer, no matter how clear his innocence may be shown by newly discovered evidence, has no remedy save a pardon from the Executive.

I recommend that the laws relating to the insane be revised. As they are now, any two justices of the peace, upon the certificate of two physicians, may deprive a man of his liberty on the ground of lunacy, and order him to be confined in a lunatic asylum. A bill was passed, at the last session of the Legislature, upon this subject, but some of its provisions seemed to me to be objectionable, and it was generally objectionable, in that its operation was limited to the city of New York. For these reasons I withheld my approval from it. There can be no doubt that there is room for great abuses under the law, as it stands. I recommend that all physicians who may grant certificates of lunacy, and all magistrates who issue an order of commitment to an asylum, be required under heavy penalties, to report their action, at once, to the county judge of the county within which the order was made, and that all superintendents of public and private lunatic asylums, be required, under like penalties, to report forthwith, the arrival of every patient at their respective establishments, to the county judge of the county whence the patient was sent; that the county judge be required to investigate the case, summarily, and confirm or annul the proceedings; and that he be empowered, at any time, on his own motion, or on the application of any one interested in an alleged lunatic, to re-open the hearing of a case, and to conduct such rehearing, with or without the aid of a jury, as to him may seem best, and thereupon, in his discretion, to discharge the alleged lunatic. Whether any amendments to existing laws relating to the State Asylums for the insane be found necessary by you or not, I recommend that private lunatic asylums be brought under some system of licensing by the public authorities. The Legislature should provide for their supervision and frequent visitation. Inasmuch as the State permits the detention of insane persons in such private institutions, it is right that the same watchful care should be exercised over persons confined in them as over those in our public hospitals.

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[9] Elections to fill vacancies in the offices of senator and member of assembly were provided for by chapter 698, passed May 14. This subject was afterwards included in section 4 of the general election law of 1896, chapter 909.

For the fourth time, I recommend an amendment of the laws relating to murder. Instances of homicide occur where intent to take life is proved, but where the facts are such that the jury are unwilling to find a verdict of guilty of murder in the first degree, because the peculiar facts do not warrant the extreme penalty of death. They cannot, under our present statutes, define the case as one of murder in the second degree. They are driven, therefore, to either acquit or render a verdict of guilty of manslaughter in the third or fourth degree, although conscious that the light penalty awarded by the law to these two degrees of crime is very inadequate. I recommend that either the maximum punishment for manslaughter in the third degree be made much greater, or that when the degree of premeditation does not, or other facts do not, in the judgment of the jury, justify punishment by death, they be authorized to render a verdict of murder in the second degree, to be punished by imprisonment for life, or for a term of years, in the discretion of the court. It is no valid objection to the above amendment that, under it, juries would have too great discretion in the matter of enforcing the death penalty. They exercise that discretion now, in many instances, and do so with the law as it stands, at the cost of rendering a verdict not satisfactory to themselves, and of allowing a very serious crime to go unpunished, except by the light penalty attached by the law to one of lower grade.

I respectfully suggest that all bills, making large appropriations of money be passed by you at a period of the session early enough to enable me to return them to you with objections, if I have any to make; so that I shall not be obliged to consent to items not, in my judgment, proper, as the only means of avoiding the defeat of other just and necessary appropriations. The supply bill, as it is commonly called, has always been sent in for approval after the Legislature had adjourned, leaving me no alternative but to approve of it as a whole, or to let all the appropriations made therein go over, many of them being required at once for the support of the various departments of the government. The practice has grown up of inserting in this bill items of appropriations of money which have no proper connection with the general purposes of the bill as indicated in its title; many of which items, I am satisfied, would not, if proposed in separate bills, receive the sanction of the Legislature. This practice has become a great abuse.*

I recommend the immediate repeal of the general town bonding act. Without discussing the policy of this law, I suggest that aid has already been given to railroads, upon the credit of municipalities, to quite as great an extent as is wise, and, in some instances, to the oppression of tax-paying communities. Its early repeal is, in my judgment, important to the general welfare of our people.[10]

EIGHT HOUR LAW.

In 1870, what is commonly called the eight hour law was enacted by the Legislature and approved by me. It provided, among other things, that eight hours should constitute a legal day's work upon all the public works of the State, and that any public officer, who should violate or evade its provisions might be removed by the Governor, or by the heads of departments to which such officer was attached. By this act, the Legislature intended to hold out the promise, on behalf of the State, to the laborers who might be employed on any public work, that they should receive a full day's wages, at current rates, for eight hours' work. The spirit of the promise has not been kept; yet no case has arisen where a removal of a public officer could legally be made. The laborer understood the law to provide for a reduction of the hours, but not of the wages of labor. The State ought not, under the forms of law, to deceive any portion of its people. Its practice should be in accord with its professions. It demands a general obedience to its statutes, and should itself set the example of strict conformity with its own laws. While the law stands upon the statute book, the professions embodied in it should be made good by such amendments to it as will render the fulfillment of its purpose certain.

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* See Const. 1846, art. 4, § 9; am. 1874, authorizing the veto of separate items in appropriation bills.

[10] Instead of repealing the railroad bonding law, the Legislature extended its provisions. See chapters 62 and 516.

TAX REVISION.

Under the provisions of a joint resolution of the Legislature, passed April 25, 1870, I appointed David A. Wells, George W. Cuyler, and Edwin Dodge a commission "to revise the laws for the assessment and collection of taxes," which commission, in the discharge of its duties, presented a report in February, 1871. The report was so important and exhaustive in its character, and so novel in its suggestions, that although I had supplied copies thereof to the Legislatures of the other States, and to municipal bodies in this country and in the British Provinces, yet, notwithstanding the very large edition issued by the State, the Report has been twice reprinted, at private cost, in order to meet the demand for it among the general public, to wit, once in this country, and once in Europe; the latter reprint being issued, with a preface by the Secretary of the British Board of Trade, by an association of gentlemen for distribution among the people of Great Britain.

In respect to personal property, the report of the commissioners shows that the whole amount thereof assessed and taxed, is not as much as thirty per cent. of the real estate assessments, or not in excess of the railroad and banking capital alone of the State; while the probable proportion of such property, assessed to its true value, is not more than fifteen per cent. The commissioners, furthermore, present a large amount of evidence tending to show that not only is such a result unavoidable under existing laws, but that the tendency of things (through recent court decisions, the offsetting of indebtedness against assets, and the exemption of the United States and other securities from taxation), is to become worse; and that at no distant day, the present system of taxation in this State will be brought down, practically, to an exclusive tax on real estate and bank capital.

Another matter of great importance, to which the commissioners call attention, is the circumstance that during the last few years the legislation of contiguous States, in respect to local taxation, has been of a much more liberal character than that of New York; and that, in consequence, the interests of New York have suffered, and are likely to continue to suffer unless remedial or reciprocal legislation is provided. Thus, for example, the States of Maine and Vermont, and also the British Provinces which border upon New York, have either wholly, or for an extended period, exempted manufacturing industry from all taxation. The new territory of the District of Columbia exempts all evidences of debt, that is, bonds, mortgages, negotiable instruments, etc.; the State of Maryland, all bonds and mortgages for the city and county of Baltimore; New Jersey, bonds and mortgages for a large part of her territory contiguous to New York, while Pennsylvania, proceeding much farther in this same direction, has exempted the machinery and capital of manufactures from local taxation, and, practically, also in a great degree, her banking capital, evidences of debt, and all vessels engaged in foreign and domestic commerce.

New York is soon likely to be forced, by considerations of self-interest and self-defense, into giving this whole subject of State taxation careful attention.

The system recommended by the commissions, and of which an outline code has been already submitted to the Legislature, is substantially as follows:

First. To tax real estate in like manner as under existing laws; provisions for enforcing valuation according to a common and well defined but moderate standard being at the same time prescribed. It is understood that the commissioners favor the creation of an office, whose incumbent shall be especially charged with the enforcement of the laws relative to taxation, and be invested with all necessary powers for accomplishing such object, and insuring, so far as possible, equity and uniformity.

Second. To tax moneyed corporations of the State in conformity with existing laws.

Third. All experience, and especially the experience of New York, shows that the attempt to tax, directly, property other than such as is embraced under the two before enumerated classes, affords little revenue; it fails in execution, and is certain to yield less revenue in the future than in the past; and, above all, it discriminates against the industry of New York in comparison with other States. The commissioners propose as a substitute an equivalent for all such defective taxation, *to tax the occupier, be he owner or tenant, of any and every building used as a dwelling, or for any other purpose, on a valuation of three times the rental or rental value of the premises occupied; but not including under such assessment, any land except such as the building stands on, or is essential for access thereto.*

All property not embraced under one of these provisions, as above stated, is to be exempt from taxation.

The principles on which the commissioners have founded this part of their system, are stated by them as follows:

" That the market value of real estate is always proportional to and dependent on the amount of personal property, or rather productive capital, placed upon it, or in its immediate vicinity."

" Only, therefore, as personal property or productive capital is brought in connection with real estate, does its value become appreciable and augment."

"Applying, practically, to New York the proposed system for taxing personal property, through buildings or rentals, as its representative, the commissioners say, that examination will show that the aggregate of taxation, according to the new system, on the occupiers of buildings, *will be the lowest in the most sparsely settled agricultural districts of the State.* Property here is mainly in land, and the value of buildings is generally much less than the value of this land with which they are connected. As we leave the sparsely settled and agricultural districts, and rise through the more densely populated portions of the State, from the towns to the villages, from the latter to the cities, from the cities to the great metropolis of the continent, we shall find that the value of land, of buildings, and the aggregate of taxable valuation will increase as the amount and accumulation of personal property increases, until land and buildings attain their greatest market and tax valuation in Wall street, Broadway and Fifth avenue, where the accumulation of personal property is the greatest. It is also to be observed that, starting at the bottom of the scale, with the value of land greatly in excess of the value of the buildings connected with the land, that this difference, as we progress upward through the more densely populated districts, gradually diminishes, until, as is the case very frequently in the cities, *the value of the building greatly exceeds the value of the land in which it is situated.*"

"And yet, while under the proposed system, the agricultural districts would, as now, pay the smallest proportion of the aggregate taxes, and the villages and cities as now also the largest, there would be no injustice; but, on the contrary, one uniform, equitable rule of valuation and assessment."

" The sum of three times the rent or rental value is taken as the substitute for personal property, other than what is invested in the stocks of moneyed corporations, on the assumption that no person can occupy any building, who is not possessed of such property, at least to the extent of the valuation adopted; an assumption fully sustained by evidence and investigation."

The commissioners allege, in regard to their proposed new system that, under the first and second provisions, nearly all the property now subject to taxation will be embraced; and that, under the third provision, property additional, or rather ability to contribute to the expenses of the State, commensurate to the protection which the State accords to the person assessed, will be embraced to the extent of from *five hundred* to *seven hundred* millions; thus reducing the rate of taxation all over the State, and especially relieving the labor and capital invested in agricultural and manufacturing industries, and in shipping, which ought to be the object of the State especially to favor.

When the report of the commissioners was presented in February, 1871, it seemed to me and to the Legislature advisable, that on account of the novelty of the views presented, the consideration of the whole subject should be postponed for another year in order to allow of the fullest discussion and consideration on the part of the public, and, pending all action, the Legislature instructed and authorized the commissioners to prepare a code in accordance with their recommendations. This code, with a further report, will be ready at an early period of the present session, and I should fail in my duty if I did not ask for it, in advance, the most careful consideration from both the Legislature and the people.[11]

STREET PROCESSIONS.

The subject of the regulation and control of processions in public streets has been made one of special interest by unhappy occurrences in the city of New York, in July last. The occupation of the public streets by bodies of men for the purpose of civic as well as military processions has been permitted under a custom so long established that it has come to be looked upon as a common right. The local police must have, of course, great discretionary power in the matter of regulating such processions. It has been the practice of New York city to afford them protection by the presence and escort of part of the police force, without reference to the occurrences which the demonstrations were designed to celebrate, or to the race, color or sentiments, political or religious, of those engaged in them. Our respective political parties have been in the habit, on the eve of an election, of getting up such demonstrations, not only in New York but throughout the country, with banners and mottoes indicative of their own views, and not unfrequently reflecting with severity upon those of their opponents, all which are looked upon, usually, by the by-standers of either party, in good humor and perfect toleration. Noted events in our own history have been commemorated by great public demonstrations in the streets, and, in like manner, men of foreign birth or descent, have celebrated occurrences remarkable in the civil, military or religious record of the country from which they sprang, or of the faith and church in which they and their fathers were educated. This right of procession has been considered to be established by custom as firmly as the right of free discussion and as is the right of the people "peaceably to assemble" by the Constitution of the United States, and may be regarded, in some sense as a practical exercise of those rights.[c]

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[11] See special message of February 8, transmitting the tax commission's report.

A procession had been proposed for the 12th of July last, to which objection was made by persons holding views adverse to those to be celebrated, and they resolved to prevent it by violence, if necessary. Opponents of the first proposed procession organized another for the same day, with, substantially, the same line of march. The police of the city, deeming it almost certain that a serious breach of the peace would ensue, and in order to prevent it, forbade both of the proposed demonstrations. The order forbidding the processions was not submitted to me by the Police Commissioners, for consideration or approval, nor did they ask my advice upon the subject. The order was made by them in the exercise of their exclusive discretion and lawful power, and it was not my lawful right, on my own motion, to interfere with that discretion. On the afternoon of the day on which the order was issued and published, which was the day before that proposed for the processions, I received, while at the capitol, information that the local authorities thought my presence in the city was desirable. I repaired thither, immediately, and advised that the police order be revoked. I was satisfied that it would be generally regarded as having been made by those in authority in submission to the demand and dictation of those who were not, and as subversive of the equal rights of men of all races, creeds and sentiments to protection, and would tend to permanent strife and bitterness, and to the disturbance of the peace of the State, perhaps, for many years to come. In deference to my advice, the order was revoked, by the same authority which had issued it. My duty, then, was plain, to wit, to sustain, by the whole power of the State, the local authorities in repressing threatened disturbances, and by so doing, to assert the equal rights of all citizens. The loss of life that ensued from the use of military force is a matter of great regret. It is clear, however, that whatever may be the cost, the rights and privileges of all classes of men must be alike protected, or none are safe; and that the prohibition of a procession representing one class of sentiment to-day, upon the demand of its opponents, or otherwise, would be taken as a precedent for interference, on another occasion, with one representing the opposite views, to the constantly recurring disturbance of the public peace, and to the abridgment of the privileges of all. I submit to your judgment, whether any new provisions of law are required regulating this matter of street processions and public demonstrations, which, good temper being preserved, have, heretofore, been harmless recreations for those engaged in them and for great numbers of lookers-on. Whatever laws you may pass on the subject should secure equal privileges to all men of whatever religion, of whatever politics, of whatever race, color, or creed.[12]

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[c] Const. 1846, art. 1, § 10; U. S. Const. 1st am.

UNITED STATES SENATORS.

I recommend that you pass a joint resolution requesting the Senators and Representatives from this State in the Congress of the United States to use their efforts to have the following amendment to the Constitution of the United States proposed by the Congress, to wit:

"After the adoption of this amendment, Senators from each State shall be chosen by the people of the several States, and not by the legislatures thereof; whenever the term of a Senator is about to expire, his successor shall be chosen by the people of his State at the general election for members of the House of Representatives in such State, occurring next previous to the expiration of such term; and whenever a vacancy shall happen, otherwise than by expiration of term, such vacancy shall be filled at the first general election for members of the House of Representatives which shall take place, in the State in whose representation in the Senate the vacancy shall have happened, not less than three months after the vacancy shall have occurred; and, in the meantime, the Governor of the State may make a temporary appointment of Senator, until the expiration of one month after the election at which the vacancy shall be permanently filled."

The Legislature of a State has its own proper duties to perform, to wit: That of providing good laws for the internal government of the State, with which the choice of a Senator of the United States has no natural connection; and the members of a State Legislature should be chosen solely with reference to these, their proper duties, and not with reference to their probable votes for this or that candidate for Senator.

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[12] Street processions were regulated by chapter 590, passed May 7.

It is obvious, too, that the distribution of Assembly and Senatorial districts in the State, may, at times, be such that a majority of the members of the Legislature, although freshly chosen, do not represent the popular majority in the State. In such instances, a Senator may be chosen who is not in accord with the majority of the people, and who, in such case, does not represent the State at large, as he properly should do. I can see no good reason for devolving the election of a Senator upon the Legislature; while the arguments against doing so are many, and, it seems to me, unanswerable. The people are quite as capable of electing a Senator by their own direct vote as they are of electing a Governor; and there is no need of delegating the important power of choosing a Senator of the United States to any electoral body.

NEW YORK CITY.

The recent exposure of great wrongs in the administration of the local government of the city of New York, has aroused public attention, to an extraordinary but wholesome extent, to the necessity of a reform in the conduct of public affairs. In that city, especially, the people have spoken in a way which must not be misinterpreted. They demand an improvement in the condition of their local government through legislation, which shall have in view neither party nor personal ends, but the permanent general good. The limits of this message forbids a discussion of the causes which, for a long time, have been contributing to the results recently laid bare. For many years, the city had not had a charter under which it was possible for its people, even if they had been willing to attend to their own interests, to have secured an efficient and faithful local government. At one time governed under local laws which failed to fix responsibility anywhere, at other times under varied, disconnected and irresponsible commissioners, created to enable minorities in the city to exert political control; confusion, mismanagement and extravagance were apparent to every one, but the responsible authors thereof were concealed under the complicated machinery which was unwisely substituted for a simple government of the people. In my first annual message to the Legislature, while calling attention to evils then existing, I said: "Every dollar paid for taxation should draw with it direct responsibility, and every officer should feel himself at all times on trial for his public acts. No party could then long maintain local ascendency which did not nominate its best men for office, and did not by economy and good government, make their control of affairs consistent with the interests of the people;" and I added: "No good government can be secured to any great city unless it shall have one responsible head, in whom shall be vested all executive power, and to whom, as the elected representative of the people, all departments charged with executive duties shall be directly and summarily responsible and accountable. If, with this as the fundamental idea, a plan shall be devised which will give to the political minority within the city a just representation in its councils, we shall doubtless secure better results in municipal government than have ever before been attained."

The same views, excepting those upon minority representation, had been, on several occasions, in nearly the same language, urged by me while Mayor of New York, and were reiterated in my second annual message, as Governor, in 1870.

During the session of 1870 the present New York charter was enacted. It received very extensive favor from the press, and passed by a nearly unanimous vote of both Houses of the Legislature; another form of charter, submitted to them previously at the same session, having been, by a decided vote, rejected. As a whole, the charter adopted was a great improvement on the then existing condition of things. By its provisions and those of a law passed almost simultaneously with it, the former Board of Supervisors, the members of which had been designated in such a manner as to leave the people, practically, no choice in the selection of them, and against whose management of public affairs the complaints had been, for a long time, many and loud, was abolished, and Aldermen, elected by the people at large, under the new charter, were substituted. It broke up the irresponsible district commissions in which the city government proper had been substantially merged, and provided for new departments embracing every branch of public duty, to be organized by the Mayor of the city. It restored to the people of the city their constitutional right of local self-government, of which they had been for many years deprived. It defined the responsibility of those in authority; so that, in case of wrong doing, the people could tell at once upon whom to cast the blame.

It was a first step in reform, casting aside, as it did, a very vicious system of government, the evils of which had long been manifest to many, and are now manifest to all. It was not an unusual mistake, that in providing a remedy for then existing evils, others, likely to come out of the remedy itself, were overlooked. This was the fatal error in the legislation which, many years ago, transferred the government of the city from the people to irresponsible commissions. It will need great caution to avoid like mistakes in framing a new charter.

The chief defect of the present charter is in recognizing the mistaken doctrine of the Congressional tenure of office law, whereby a subordinate in administrative duties is made independent of the appointing power, instead of being subject to summary removal by the chief executive officer for cause satisfactory to him. The length of term of office assigned to some of the departments would not have been found, in practice, objectionable, if the power had been given to the Mayor to remove, summarily, for misconduct.

As a substitute for this wholesome power of removal, it was provided, in harmony with the erroneous doctrine so prevalent of late years — that good administration is to be secured by scattering instead of concentrating responsibility — that the Mayor should have no power over the subordinate officers, in case of misconduct, except to accuse them before the court of Common Pleas, as the means (and the only means), of removing them from office, while the Mayor himself was not made subject to removal by the Governor.

A somewhat lengthened tenure of office in some departments of the city government, such as are created to carry out, or to administer some special work, may be, for many reasons, desirable; and is not objectionable, if the power be given to the Mayor to remove, for cause, to be publicly assigned by him. The parks of the city and the Croton Aqueduct have been thus administered from the beginning. All officers connected with the general administration of the city affairs, the Comptroller, the Counsel to the Corporation, the Chamberlain and others, should be appointed by the Mayor, with or without the consent of the Aldermen, be removable by him, and go out of office with him at the end of his term, as a matter of course.

My judgment is not in favor of requiring the consent of the Board of Aldermen to appointments. To do so, leads to a division of responsibility and opens the way for bargains whereby one appointment may be dependent for its confirmation upon the consent of the Mayor to give other places to favorites of the Aldermen.

Though the charter was not all it should have been, it was the best that could then be obtained, and it promised relief from great and long continued wrong, under which the people of the city had been suffering, and from a system of government, the abuses under which are now coming to light. The misconduct, recently exposed, was not a consequence from any of its provisions.

The responsibility for the wrong-doing, which has very justly aroused public indignation, does not rest so much upon the charter as upon individuals who held office in the city before the charter was passed, and took office also under it. The difficulty with the charter, in this connection, is that it provided no means for summary removal from office. The auditing of the alleged claims against the former county government to the extent of six millions of dollars and upward, to which the public attention has been chiefly directed, was made, not under the charter, but under a clause in the bill commonly called the New York county tax levy; a clause, perhaps, not objectionable in itself, if the powers which it conferred had been faithfully and carefully executed. The annual tax levy of New York should no more be made up by the Legislature than that of any other county. It has been the practice for many years, to have the city tax levies passed upon by the Legislature, and this has been the occasion of great abuse; the estimates of the city authorities being almost always largely increased by the Legislature. One of the good results looked for from the enactment of the present charter and other laws passed at the same time, was the abolition of the practice of bringing the city tax levies into the Legislature.

I allude to these facts not because I would recommend retaining the present charter, but because I think they ought to be known and understood. Many of the provisions of this charter cannot, in my judgment, be improved upon, but it is under popular disfavor, and I recommend its repeal and the enactment of a new one in which all that is good of the old one may be retained, all that is evil rejected, and all that is defective remedied.

The people of the city have, by their recent concerted and intelligent action, proved their capacity to manage their own affairs, and to redress their own wrongs. They demand of the Legislature now, not a return to systems which have, upon trial, proved to be failures, but the establishment of the wisest and best form of a strictly local government; the prominent features of which shall be executive power and responsibility in its Mayor, clear and well defined accountability of all officials, and frequent opportunities for the people to rid themselves of a local administration not faithful to their interests. It would not be wise for the State to take any part of the responsibility for the management of the local affairs of New York city. It is the duty of the State to give to the city a good organic law under which its people can manage their own affairs and protect their own interests, and then let them understand distinctly that success depends on their own willingness to attend to their public duties. If they will not give attention to their own affairs, no form of charter, nor provision of law can secure to them good government. Municipal wrongs are not to be cured by the mere passage of a new law, however perfect in its structure; and it is certain that any charter framed to promote personal or partisan interests, will have, as it deserves to have, a brief existence.

New York city needs a permanent charter, as well as a good one; one which cannot be nullified or substantially repealed by the surreptitious insertion of a clause in a tax levy, or some other bill, or even by specific law, with any and every change in the persons composing the Legislature. The charter of a city of a million inhabitants should be as well considered, as permanent and almost as sacred as the Constitution of a State. It should not only provide for the organization and conduct of the various departments of the local government, and clothe it with power to raise by annual tax the moneys necessary for its maintenance, but it should limit and restrict its power to create debts, except, by the consent of its people, expressed in a formal and authoritative manner. In this respect, it would be well if we could imitate in part at least our own State Constitution, which after providing Sinking Funds for the payment of existing debts, forbids the creation of any new indebtedness, except with the express consent of the people, for some single work or object to be specified in the law, which must provide also for a direct tax to pay the interest every year, and the principal in a specified period.[d] This permanent character cannot, however, be secured to a charter, without an amendment to our State Constitution.[e]

In framing a new charter, now, the following points should be kept prominently in view:

1st. Fixing the responsibility for good administration of all city affairs upon the Mayor; and to this end giving him full power of appointment and removal of all heads of departments, except the police.

2d. Giving the people an early opportunity for a new election of local officers.

3d. Making the Mayor subject to removal by the Governor, for malfeasance in office or neglect of duty.

4th. Providing for a police department, with three commissioners, to be appointed as follows: one by the Mayor, one by the chief judge of the Court of Common Pleas, and one by the chief judge of the Superior Court, to be removable, any of them, as in the case of sheriffs, by the Governor for cause. A board thus constituted and so subject to removal would be, as it ought to be, a strictly local board, subject to the same State supervision as sheriffs, who are conservators of the peace in their respective counties, and as free as any board could possibly be from the danger of improper personal or partisan influence.

5th. Requiring full monthly publication of all receipts and expenditures, and of all bonds issued, and frequent publication also of all contracts made by any department, with a statement of the general operations of each department and of their pay rolls.

6th. Concentrating the responsibility of those composing what may be termed the legislative branch of the city government, by constituting this of only one board, a Board of Aldermen not too numerous; this board, with the Mayor, acting as supervisors, levying all taxes. A second Board is not necessary. The Common Council is not called upon to pass laws, but to manage the affairs of a corporation. To divide it into two Boards has the effect simply of scattering responsibility, weakening the sense of responsibility and dividing the watchfulness of the public. Making the Board to consist of too many members will tend to the same evil results. If any plan can be devised for giving in the legislative branch of the city government, by election, a just and proportionate representation to the minority, it would be a wholesome improvement. In carrying out such a purpose, great care must be exercised lest the choice of their representatives be, practically, taken out of the hands of the people, as in the instance of the late Board of Supervisors, which was the worst device of modern times in connection with local government. The candidates named by either party were sure of being returned. The proper purpose of minority representation is to secure to the minority the opportunity of being heard in the public councils, without nullifying the rightful control of the majority or relieving it from its just responsibility.

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[d] Const. 1846, art. 7, § 12.

[e] Const. 1846, art. 7, §§ 1, 9.

7th. Providing that there shall be no debt created except for some single work or object by authority of law, and also under an ordinance to be submitted to, or approved by the people of the city; every ordinance and law authorizing a debt to contain a provision for the extinguishment of the same within a fixed period; or else, giving to the Mayor an absolute veto upon all ordinances creating or increasing the city debt. Upon all other ordinances, his vote should not be overruled except by the vote of three-fourths of all the members elected to the Board of Aldermen; and in the case of ordinances containing several items of appropriation of money, he should have power to veto some of them while approving of others.

8th. Giving compensation to all officers and appointees of the city government by fixed salaries, and not by fees.

9th. Providing some well-defined, summary and effectual remedy in the courts for taxpayers against abuses of trust by municipal officers, with the right also given to them, under proper restrictions, to examine from time to time, the affairs of any of the departments.

10th. Providing that the acceptance of any office in, under, or connected with the State Government or the Federal government shall vacate any office held by the same person in or under the municipal government, and that no person shall hold more than one office, at the same time, in or under the municipal government.

These suggestions, although made with especial reference to New York city, will apply generally to all large cities. City charters must, of necessity, according to population and circumstances, differ more or less in detail. What is needed in a city of a million of people would not be required in one of fifty or a hundred thousand; and a general law aiming at entire uniformity in such charters is, in my judgment, not desirable. The people of any city, with a charter embracing the general provisions to which I have referred, can, if they choose, keep up a simple, honest and efficient local government; and under such a charter, if they will frown down corruption among the seekers as well as the holders of office; if they will condemn the lavish expenditure of money before election to secure office as earnestly as the stealing of it afterward; if they will make those who ask their suffrages understand that the candidate who by money demoralizes the elector is as much a criminal as the representative who takes a bribe; if they will bear in mind that spasmodic reform movements work no permanent good, but that a persistent attention to public affairs, on their part, is necessary to ensure a faithful administration by their representatives; they can secure all that is possible under any law or system of laws.

Simplicity is one great requisite in the charter of a city. Without it, responsibility can never be clearly and unmistakably defined and fixed. All complicated schemes which aim to secure to the minority an equal or unequal portion of the executive and administrative offices of a municipality, and so to make it share with the majority the responsibility of government will prove failures.[13]

PURITY OF ELECTIONS.

At its last session, the Legislature adopted concurrent resolutions proposing an amendment of the Constitution relative to bribery. They have been duly published, and will, I trust, be favorably acted upon by you, so that they may be submitted to the people for their approval at the next general election. The proposed amendment relates to the corrupt expenditure of money to influence electors in voting, and if it shall be adopted, laws may be enacted which will, if rigidly enforced, tend to check an evil which has assumed proportions of great magnitude. If I may believe current rumors, men of otherwise good repute are in the practice of standing at the polls in many portions of the State — even in this city, the seat of government — with money carried openly in their hands, and of paying it, on the spot, to electors for their votes. No such open and shameless use of corrupt means has been charged in the city of New York, much as is said of election abuses there.

The fact that large sums of money are expended throughout the State at every election is well known. Much of it must be spent for corrupting the electors. In city and in country, men are nominated to office because they have been able to purchase a majority in nominating conventions in the first instance, and because it is known they can expend large sums, afterwards, to promote their own election and that of their associates on the same ticket. Men, not candidates, but who take an interest in public affairs, are called upon to contribute, and do contribute liberally toward securing party success. Individuals and parties are aided by moneyed corporations, who hope in this way to secure favorable legislation for their own interests, or to buy the countenance and support of the government from which they receive their privileges. In this way, the moneyed power of the country is brought in to control elections and secure to itself what it deems strength; but it does so at the risk of its own safety; for it thus debauches the moral sentiment of the community. The love of money, we are told, is the root of all evil. It is, assuredly, the root of all evil in free governments; and the lavish expenditure of money in elections is the chief cause of the corruption in our politics. A man who expends large sums of money to secure an office is apt to seek to make it up to himself when in office. I do not doubt that the multiplication of officers to be elected by the people has had much to do with introducing or increasing this corruption of our politics. The struggle between candidates for local offices is apt to be more intense than the competition for higher place before larger constituencies. It is easier, too, to calculate the influence of corrupt means; and it is easier, by them, to effect the election of candidates, when the constituency taking part in the election is limited in number. The amendment, submitted to you, will enable the Legislature to deprive of the right of suffrage every one who shall be convicted of receiving a bribe for his vote or of bribing an elector; and to pass laws providing that any candidate, guilty of bribing the electors, shall be deprived of the office to which, at any election where he was guilty of this offense, he may have been chosen.

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[13] See *post*, p. 519 for a note on the New York charter and its interpretation.

The inconvenience occasioned to the electors, by registry laws, is not to be counted against them, if, by their means, we can ensure pure elections. I have little faith in them to prevent fraud at the polls. They have been tried and have failed to prevent it. More frequent charges of fraud, and of frauds of a grosser character, have been made since registry laws were put in operation than before. Many who have watched their working insist that they can be easily made, and have been made, a convenient cover for frauds, which, without them, could not have been committed. They have this effect, certainly, that the vigilance necessary to detect illegal voting has to be extended over several days, instead of the one day of election, requiring more time for this purpose than men will spare from their private business; and so the watchfulness over the poll-list is, ordinarily, less general and probably less complete than under the system of challenging on the day of election.

Upon principle, a registry law, if any be passed, should apply to all parts of the State alike. Yet I am satisfied that intelligent public opinion in the rural districts, among men of all parties, does not favor one there. The inconvenience and expense to the electors in such districts, from such a law, are very great, with no adequate good result in compensation. The conviction, however, prevails extensively among intelligent men that, in large cities, registry laws can be made useful in securing the purity of the ballot; and this conviction is so strong that the continuance of the system in the larger cities may be advisable. All laws requiring a registry of the electors, previous to an election, should be made as little vexatious and oppressive to honest voters as is possible, consistently with securing proper identification of the person claiming the right to vote and due examination of his right. It must be borne in mind that it is not the province of a registry law to define the qualifications of voters, or to confer or restrict the right of voting. That right is conferred by the Constitution, and cannot be taken away by act of the Legislature, except in the few cases specified in the Constitution.[f]

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[f] Const. 1846, art. 2, §§ 1, 2.

Any law which you may pass, therefore, ought not to be framed so as to work the actual disfranchisement on the day of election of any elector who, for good reasons, such as sickness or absence from home, or his not having arrived at full age until after the last day of registry, was unable to have his name registered.

The complaints with regard to the late election in New York and Brooklyn, made through the press, are chiefly of false counting of ballots and false returns by inspectors of election. The general suspicion of the existence of such an evil is almost as injurious as the practice itself; our people, if led to believe that it is carried on extensively, will neglect to vote, and will lose their habit of submitting quietly to the result of an election. The crime is, under our form of government, one of the worst, in its nature and in its effects, and should be punished accordingly. It is a practice which, persisted in, is more likely to overturn our government than any open war that can be levied against it. We have wisely, in our statutes, restricted the definition of the crime of treason to acts of open war against the State government, and to combinations of one or more persons to overturn it by force. The crime of making false returns of votes cast at an election is, nevertheless, of the nature of treason; for it seeks to take away the lawful power and destroy the rights of the true sovereign in our government, the people.

You have the power to attach what penalty you think necessary to any species of offense against the laws; and those imposed should be sufficiently severe to deter men from committing crimes, yet not so extreme as to be likely to protect them from conviction.

Effectual laws against bribery of the electors and to take away an office obtained by bribery, through protection of the right of challenge on election day, severe penalties against miscounting of votes and against illegal voting, ought to suffice for the protection of the ballot, and will suffice, if citizens, juries and public officers will do their duty.[14]

PURITY OF LEGISLATION.

The people cannot be too fully awakened to the dangers inseparable from the growth of moneyed power in this country, whether wielded by individuals or corporations. It makes itself felt everywhere in our politics, and aims to control, and too often does control legislation in Federal and State capitals. We cannot directly strike at it in other States, or at Washington, but we can begin at the capital of our own State, and set an example to others. There is a popular belief that much important legislation in past years, here, has been influenced by the direct use of money. This belief is so general and wide-spread, that it is due to the people that there should be a prompt and thorough legislative inquiry to ascertain whether it is well founded. If it be so, guilty men should be brought to justice under existing laws, if that is possible. If not, then proper laws should be passed to meet cases which may hereafter arise. The people will be slow to obey laws which, they believe, are enacted by a corrupt Legislature. Their demand to-day is not for municipal reform only, but for reform in every department of government, State and Federal, in which abuses may be shown to exist. Authority, whether executive or legislative, to be cheerfully obeyed, must be respected and honored.

CONSTITUTIONAL REFORM.

A few years ago the people of this State voted in favor of holding a convention to frame a new Constitution; thus expressing their dissatisfaction with the existing Constitution. The convention was held; but, on the result of its deliberations being submitted to a vote, the people rejected the proposed new instrument, with the exception of one article, to wit, that relating to the judiciary. It is not a fair inference from this action of the people that they desired a convention for the single end of amending the judicial system of the State. That could have been done by the simple process of submitting, after due consideration by the Legislature, a single amendment, covering the one subject. The vote of the people calling a convention indicated that they recognized many defects in our existing Constitution. The vote rejecting the substitute proposed by the convention indicated that, in the popular judgment, the remedies suggested for these defects were not sufficient or satisfactory.

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[14] The bribery amendment was again adopted by the Legislature in 1872, but was not submitted to the people.

In my opinion, the present Constitution of the State is very defective as a frame work of efficient Republican Government. In considering this subject, it must be borne in mind that the population of this State is now larger than that of the whole Union when the Constitution of the United States was put into operation, and that our State has, in fact, in the number of its people and the great interests protected by its laws, the proportions of a nation. It must also be remembered that the comfort, welfare, and happiness of the people are affected in a very much greater degree by the laws of the State, and the manner of their enforcement, than by the operations of the general government. The title to property and the rights of, and the restraints upon the owners of property, are regulated by State laws. The enforcement of business contracts of every nature are, in the main, in the hands of the State courts. The detection and repression of crime are dependent, except in a few rare instances, upon the enactment of proper criminal laws by the State Legislature and their due enforcement. The order of the community is under the guardianship of State laws, and dependent upon State authorities for its preservation. The powers of our municipal governments, whose action influences still more sensibly the peace and comfort of every man's home, are conferred and defined by the State government. It is obvious, therefore, that it is a matter of transcendent importance to every citizen of this great Commonwealth, that it should possess a wisely constructed frame work of government, adapted to secure the most wholesome legislation, the most efficient enforcement of law, the most faithful administration of its affairs, and an uninterrupted maintenance of order.

I do not recommend the calling of another Convention to revise the Constitution, at this time. The attention of the people will be much engrossed this year by the Presidential election; but I trust that, immediately after that event, the efforts of our best citizens, of all parties, will be united to effect a thorough revision. Nor am I sure that a Convention is a necessary, or the best means by which to attain the end.

A commission of thirty-two (32) eminent citizens, to be made up by selection of an equal number from each of the two great political parties, would, it seems to me, be as likely to work out a good result as a larger body.

Such a commission could have all the benefit of the debate incident to a larger body through intelligent discussions in the press, and the voluntary suggestions of thoughtful citizens; and would be almost certain to agree upon amendments which would secure the popular approval.

If you should be of the opinion that it is wise to appoint a commission, there can be no objection to your creating it at this session. Its report would not be made until after the Presidential election, when the public mind would be in a condition to examine calmly, and to decide wisely. True, it is not the mode provided in the present Constitution for a revision of that instrument, but it cannot be doubted that a Constitution prepared by such a commission and submitted by them to the Legislature and by the

Legislature submitted to the people in due form, would, if approved by a vote of the people, be regularly established and become substituted for the present Constitution.[15]

You have, moreover, the constitutional power to originate any amendments to the existing Constitution;[s] and if the same shall be concurred in by the Legislature, to be chosen in eighteen hundred and seventy-three (1873) they may be submitted to a direct vote of the people, and if approved by them, will become a part of the Constitution.

My convictions are so strong that the present organic law of this State is full of serious defects, that I feel justified in calling your attention to the subject and pointing out the particulars in which, in my judgment, it fails as a means of securing to us the best possible administration of our public affairs.

The Constitution of the United States was constructed by a convention made up of the wisest and ablest men to be found in the thirteen States which then composed the Union. Each of these States had been obliged, some years earlier, to frame a constitution for its own government. The delegates from the several States did not, therefore, come together as men inexperienced and new to the work they were called upon to perform. They brought with them, from their several constituencies, varying and indeed conflicting ideas of the powers which ought to be conferred upon the new government about to be established, and the manner in which those powers ought to be distributed among its several departments.

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[15] A constitutional commission was provided for by chapter 884, approved June 15, to be composed of thirty-two members, four from each judicial district. The commission met in Albany on the 4th of December, 1872. It continued in session until the 15th of March, 1873. Its report, embodying several proposed constitutional amendments with the reasons assigned by the commission therefor, was submitted to the Assembly and Senate respectively on the 24th and 25th of March, 1873. The proposed amendments, so far as adopted by the Legislature, were submitted to the people at the general election in 1874 and approved. The amendments took effect January 1, 1875.

[s] Const. 1846, art. 13, § 1.

There is, of course, this difference between that instrument and the constitution of a State; that the former originated a special government and conferred on it certain powers and none other, while in the State government all the powers of government inhere, except such as by the Constitution of the United States or by its own Constitution, it may be forbidden to exercise.[h] This difference does not affect the question of how the powers of government may wisely be distributed among the different departments, executive, legislative and judicial, nor that of how to provide the instrumentalities through which the government is to be administered. In most of these particulars the Constitution of the United States may wisely be followed.

Under the existing Constitution, the executive department of the State is not so organized as to insure the most efficient administration of affairs, and the most complete and direct responsibility. The duty of the chief executive officer, the Governor, is to see that the laws are faithfully executed. It is obvious that in the selection of the subordinate officers upon whom, within their separate departments, the duty is devolved of executing the laws of the State and administering its affairs, the chief Executive ought to have a controlling voice. The experience, alike of public affairs and of private business, prove the expediency of a single executive. The laws and the rules under which public or private business is to be managed are to be carefully laid down and precautions taken against their violation; but when, subject to these rules and within their limits, the chief direction of affairs is given to one person, the best safeguard for faithful administration is provided by concentrating responsibility. The Governor ought to be held responsible for every branch of the actual administration of the State's affairs. Under our present Constitution, all the important departments are separated from his control. In the management of the finances of the State, of the Canals, of the State Prisons, in the prosecution of crime, the chief Executive of the State has not, as he should have, the directing power. In order that responsibility may be full, direct and unmistakably fixed, and that the people may always know who is to blame for any maladministration, all the heads of administrative departments should be subject to the supervision and the correcting power of the Governor. The duties of the Secretary of State are so directly connected with the details of executive action, especially in the matters of appointment to office and the issuing of pardons, that he ought to occupy the position of chief assistant and adviser of the Governor; and ought to be selected by him. The Attorney General is the legal adviser of the Governor. The chief executive officer of the State should be allowed the privilege which all men exercise, of selecting for a legal adviser such person as is, in his judgment, the most competent. The Attorney General ought to have supervision over and be responsible for the conduct of all that class of officers, throughout the State, which is charged with the duty of prosecuting for crime and other violations of State laws. Prosecuting officers for offenses against the laws of the State, now erroneously called District Attorneys, should not be county officers, but be the deputies of the Attorney General, appointed by him or by the Governor on his recommendation. In this way, responsibility for the due enforcement of the laws could be brought home, as it should be, directly to the Governor, upon whom the duty is devolved to see that the laws are faithfully executed.

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[h] U. S. Const. 9th and 10th am.

It appears to me proper that the Secretary of State and the Attorney General should be appointed by the Governor without the intervention of the Senate, and hold office during his pleasure; and that the Comptroller, a Superintendent of Canals, and a Superintendent of Prisons, should, with or without the consent of the Senate, be appointed by the Governor to hold office during his own term, but removable by him at any time, for cause. These officers would form a valuable council to the Governor.[16]

On the Superintendent of Canals should be devolved all the duties now performed by the three Canal Commissioners and the State Engineer.[17]

The management of the prisons of the State needs great reform which cannot be secured by a mere change of officers; the system is at fault. A constitutional amendment has been suggested putting these institutions under the charge of a Board of Citizens who are not to be paid for their services. While that would be an improvement on the present system,[1] reflection upon the subject has convinced me that a better amendment would be to supersede the present commission of three Inspectors (elected one every year by the people) by one Inspector of State Prisons to be appointed by the Governor and to be removable by him. An advisory or examining board of citizens might be valuable in addition; but for the actual administration of prison affairs and the appointment of all subordinate officers, it would be better to have the responsibility concentrated upon one man, that one man being accountable to the Governor, than to have this responsibility divided among the members of a board or a commission.[18]

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[16] The Constitutional Commission of 1872 adopted in part the views expressed by the Governor, as to the method of choosing State officers, and reported constitutional amendments providing for the appointment by the Governor of the Secretary of State, Attorney General and State Engineer and Surveyor, and for the election of the Comptroller by the people. The Legislature did not adopt the proposed plan of appointing these State officers, and they therefore continued to be elected by the people.

[17] The Constitutional Commission proposed an amendment creating the office of superintendent of public works to be appointed by the Governor, and vesting in him general supervision of canal affairs. This amendment was not adopted by the Legislature at this time, but was subsequently adopted and submitted to the people in 1876 and approved. (Art. 5, § 3.)

[1] Const. 1846, art. 5, § 4; see am. 1876.

It might be well that the State Treasurer, being the actual custodian of the public moneys, and perhaps the Superintendent of Public Instruction, should be appointed by joint ballot of the two houses of the Legislature;[19] but all other administrative officers of the State, in addition to those heretofore named, should, in my judgment, be appointed by the Governor, with or without the consent of the Senate, so as to make his responsibility for the good management of the public affairs complete. In connection with this part of the subject, I would recommend that the term of office of the Governor be extended to three years, which was its duration under the first Constitution[j] of the State.[20] If these changes could be made in the Constitution, the people would have an opportunity once in three years, of putting out of power the entire administration and bringing in a new set of men, whereas now they can make only a partial change every year. It has occurred more than once in consequence of a part of them going out of office each year, that some of the administrative officers of the State have been of one party, and others of the opposing party; a condition of things that bewilders the popular judgment when seeking to fix responsibility for maladministration.

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[18] The Constitutional Commission proposed an amendment creating the office of Superintendent of State Prisons to be appointed by the Governor. This amendment took the same course as the amendment relating to the Superintendent of Public Works. It was submitted to the people in 1876 and approved. (Art. 5, § 4.)

[19] The Constitutional Commission proposed an amendment providing for the election of a State Treasurer by the Senate and Assembly on joint ballot. The Legislature of 1873 adopted this section, but it was not included in the amendments submitted in 1874.

[j] Const. 1777, § 17; 1821, art. 3, § 1; 1846, art. 4, § 1 see am. 1874.

[20] The amendments proposed by the Constitutional Commission included a provision extending the term of office of the Governor and Lieutenant-Governor from two years to three years. This extension was adopted by the Legislature and approved by the people. (Art. 4, § 1.)

In the Legislative Department there is great need of providing additional safeguards against faulty and special legislation. For twenty years past, the laws passed exceed an average of five hundred a year; for the last six years they average over eight hundred a year, and it requires now two very bulky printed volumes of above two thousand pages to record the acts of each session. There can be no necessity for this mass of legislation. More than one thousand bills are now passed in a session; as the session lasts only about one hundred days, it will be seen that at least ten bills a day have to be passed through both houses, and as three readings should be had of each bill in each house, it is plain that deliberation by the members of the two houses over proposed laws is impossible.

Notwithstanding the deference which it is natural that the Executive should pay to the Legislature in matters pertaining to their special duty, that of law-making, I have found myself obliged, in the course of three sessions, to withhold my official approval from an aggregate of three hundred and ninety-one bills. In addition, more than one hundred bills have, after being delivered at the Executive Chamber, been recalled by the Legislature for reconsideration, in order to correct inaccuracies or strike out objectionable provisions, discovered in my examination of them. It is not right to rely solely upon the Governor to review proposed legislation. It must happen, under the present habit of passing laws, that bills will, at every session, receive the Executive approval containing provisions which escape his scrutiny, and to which, if his attention had been called to them, he would have objected. The people must do their part, in guarding against improper legislation, when selecting their representatives in the Legislature; and the organic law should be so framed as to promote a wise selection.

Provision ought to be made in the Constitution securing the actual reading of every proposed law on three separate days in each house, and forbidding any substitute for the full and free discussion which pertains to consideration of a bill in committee of the whole house.[21]

The provision in the existing Constitution limiting the session of the Legislature to one hundred days,[k] has had no good practical effect. It has not lessened the amount of legislation; it has simply caused the members to act with the more haste. The restriction should be removed and a fair annual salary be paid to Senators and Assemblymen. There is no true economy in withholding from public servants a just compensation for their labor.[22]

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[21] The Constitutional Commission proposed the following substitute for the existing section 15 of article 3, relative to the passage of bills:

"Every bill shall be considered and read twice, section by section, in the Senate and Assembly. Every bill shall have three readings, no two of which shall be on the same day, and the bill and all amendments thereto shall be printed and distributed among the members of each house, at least one day before the vote shall be taken on its final passage. The question on the final passage shall be taken immediately upon the last reading, section by section, and shall be taken by yeas and nays, and the yeas and nays shall be entered upon the journals. No bill shall be passed unless by the assent of a majority of the members elected to each house."

This plan was not accepted by the Legislature. The essential principle involved in the suggestion was embodied in section 15 by an amendment included in the Constitution of 1894, which provides that

"No bill shall be passed or become a law unless it shall have been printed and upon the desks of the members, in its final form, at least three calendar legislative days prior to its final passage, unless the Governor, or the acting governor, shall have certified to the necessity of its passage, under his hand and the seal of the State," and that "on the last reading of a bill, no amendment thereto shall be allowed, and the question upon its final passage shall be taken immediately thereafter, and the yeas and nays entered on the journal."

[k] Const. 1846, art. 3, § 6.

[22] The provision in the Constitution of 1846, fixing the *per diem* compensation of members of the Legislature at $3 and limiting the aggregate compensation to $300 for each session was abrogated by the Constitutional Commission's amendments which proposed an annual salary of $1,000. The Commission followed in part the plan proposed by the Legislature in an amendment adopted in 1872, which fixed the annual compensation of members at $1,000, with an additional allowance of $200 for the Speaker. The Legislature was required to provide for the reduction of salaries for non-attendance.

The Legislature of 1873 increased the annual compensation of members to $1,500, and in this form the amendment was approved in 1874. (Art. 3, § 6.)

As a better restraint upon undue prolongation of a session, I suggest that power should be given to the Governor to prorogue the Legislature at any time, after it shall have been in session for one hundred days.

The chief office of a Senate should be to review the action of the other house, to check and restrain improvident, hasty or unwise legislation; and, for the best discharge of this duty, it should be composed of men well versed in public affairs. Its name imports that it is to be a council of men of long experience. Every inducement should be held out to attract the right men to service in this body. The public cannot expect, any more than a private person, to command valuable services unless it offers an adequate reward. This reward need not be wholly pecuniary; the dignity of an office is often a more powerful inducement to the class of men we need in the public service. A long term and a large constituency would greatly enhance the dignity of the office of Senator, and make it attractive to our most distinguished citizens. If the Senatorial term were made four or five years, and the State were divided into a small number of Senatorial districts, so as to throw the choice of Senator upon a large constituency, and the compensation made a fair one, I do not doubt that the ablest and most experienced of our public men would be found ready to apply themselves, in the Senate, to the important duty of securing good laws for the people.[23]

In the constitution of the house of Assembly no improvement suggests itself to me, except to abolish the single Assembly districts as now established, and restore county representation; that is to say, that every county shall elect the whole number of Assemblymen to which it is entitled upon a general ticket.[24]

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[23] The Constitutional Commission's plan proposed eight senate districts, with four senators to be chosen from each, one each year for a term of four years. This plan was not accepted by the Legislature.

In respect to the Judicial Department, the action of the people is so recent in adopting the new sixth article of the Constitution (still further action on their part next year, upon the mode of selecting judges in the future, being also already provided for), that it would not be wise to have any changes made.

Among the general provisions of the Constitution, there ought to be one limiting the amount of indebtedness which municipalities may incur, and defining the purposes for which it may be incurred.[25] Uniformity of the several classes of local governments, counties, towns, villages, ought to be secured by constitutional guaranty; so as to prevent special legislation with regard to them. It is impracticable, as I have already said, to frame a uniform charter for our cities. But there are certain fundamental characteristics which ought to be found in all city charters, and ought to be secured by constitutional provision.

There should be more specific constitutional restraints upon legislative power to grant special charters for private corporations; upon special legislation generally;[26] upon legislative awards of extra compensation to claimants under contracts and otherwise; all of which tend greatly to encumber the statute book, demoralize the Legislature, and deplete the treasury.[27]

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[24] There was considerable discussion in the Constitutional Commission concerning the structure and composition of the Assembly, but no plan was reported embodying any change in its organization.

[25] An amendment limiting municipal indebtedness was proposed by the Constitutional Commission, adopted by the Legislature, and approved in 1874. (Art. 8, § 11.)

[26] The Constitutional Commission proposed a series of limitations on the enactment of special laws. The Commission's plan was modified by the Legislature, and as modified was submitted to the people in 1874, and approved, becoming section 18 of article 3.

The Commission also amended the existing constitutional provision relating to the legislative powers of boards of supervisors, by requiring such powers to be conferred by general laws. (Art. 3, § 23.)

The veto power needs to be made more effectual.[1] Two-thirds of all the members elected to either House should be required to overrule a veto, and where a bill contains several items of appropriation of money, the Governor should be authorized to refuse his assent to one or more of the items, while approving of others.[28]

I have dwelt at this length upon the defects, as they appear to me, of our present Constitution, as the best method of inviting attention on the part of the Legislature and the people to the subject.

The excitement of a long war, and the events succeeding it, have operated to divert our attention from our immediate home affairs. It is time we began to look to them.

The framers of the Constitution of 1846, eager for decentralization of power, made the mistake of supposing that this was to be effected by breaking apart and disconnecting the machinery whereby the State government is to be carried on, and by multiplying the number of elective officers. Decentralization consists in giving to the people of every county or other political subdivision complete control of their own proper local affairs, not in giving to the people of a county the selection of State officers, of officers whose duties are exclusively connected with the general affairs of the State and the enforcement of the laws of the State. It is singular that true decentralization, which is to be found in enlarging the powers of the Boards of Supervisors of the several counties, was not provided for in the Constitution except by leaving the matter to be regulated by the Legislature.

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[27] The Constitutional Commission's proposed amendments included provisions prohibiting extra compensation to any public officer, servant, agent or contractor. (Art. 3 § 24.)

[1] Const. 1846, art. 4, § 9; see am. 1874.

[28] The Governor's power to veto separate items in appropriation bills was included in an amendment (art. 4, § 9) proposed by the Constitutional Commission, which was approved in 1874. The same section required a vote of two-thirds of all the members elected to each house to pass a bill over the veto.

Of the various methods by which a revision of the Constitution may be undertaken, my preference is for the appointment of a commission consisting of thirty-two members; and I recommend the passage of an act for the appointment of such a commission. [See note 15.]

Mindful of the fact that the majority of the Legislature and the Executive are of opposed political parties, I refrain from discussing questions connected with the administration of the Federal government, upon which our opinions and views would widely differ; hoping that, in dealing with the home affairs of the State, we may be able to work together, earnestly and heartily, for the promotion of the general welfare of our people.

JOHN T. HOFFMAN.

SPECIAL MESSAGES.

January 2. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *January* 2, 1872.

"The financial condition of New York city is a matter of great interest to the people of the State at large, and, in some degree, to the commercial world, its stocks and bonds being held for investment at home and abroad. In view of the recent events, I deemed it my duty to procure for you full information as to its liabilities and resources, and addressed a letter to the chairman of the State board of commissioners for revision of the tax laws, the Hon. David A. Wells, who seemed to me specially fitted for the work, requesting him to investigate and report to me. In consequence of delay in his obtaining some of the facts, his report did not reach me until my annual message was in print. My letter to him and his reply are as follows:

"EXECUTIVE CHAMBER,
ALBANY, *November* 25, 1871.

"MY DEAR SIR.— The financial condition and credit of New York city are of interest as well to the people of the

State at large as to its own citizens. It is important that the actual condition of our great metropolis, in reference to its indebtedness and its resources, should be made known with accuracy; and I desire to communicate the facts to the Legislature and the people of the State in my next message. Will you undertake to investigate the matter in my behalf?

Very truly yours,
JOHN T. HOFFMAN.

Hon. DAVID A. WELLS, Chairman, etc."

NEW YORK, *December* 28, 1871.

SIR.—In response to your note of November 25th, requesting me to investigate and report to you on the relation which exists between the indebtedness of the city and county of New York and the resources available for the payment of such indebtedness, or the extent of the resources of property which may be fully regarded as constituting an adequate and inalienable security for the ultimate payment in principal and interest of such indebtedness, I have the honor to submit the following exhibit:

FUNDED DEBT.

By report furnished on request by Hon. A. H. Green, Comptroller, it appears that the funded debt—bearing five, six, and seven per cent interest—of the city and county of New York, was, on the 16th day of December, 1871, $87,371,808.51; and the assets of the sinking fund of the city and county—consisting of stocks and cash—available for the redemption of debt, were, on the same day, $20,137,093.02; thus making the present *net* funded debt of the city and county of New York $67,234,715.49.

FLOATING OR TEMPORARY DEBT.

The temporary or floating debt of the city and county of New York—consisting of bonds issued in anticipation of receipts and assessments, arrears of interest, State taxes, unpaid warrants and the like — was, on the 16th day of December, 1871, $28,259,071.35; deducting cash on hand — $6,959,919.62 in the city and county treasury — $21,299,152.73.

In addition to the above, the Comptroller also reports claims already presented on unsettled accounts, to an estimated aggregate of $6,000,000, which last included would make the total *ascertained* debt and ' claims presented ' of the city and county of New York, on the 16th of December, 1871, $94,523,867.22.

PROSPECTIVE INDEBTEDNESS.

So much for the present aspect of the indebtedness of the city and county of New York. In respect to the future, it is to be noted:

First. That much of the existing temporary and floating debt of the city and county of New York, as above indicated — including an aggregate of assessment bonds issued in anticipation of the tax receipts of $14,950,700.00 — is redeemable from the collection of assessments, or arrears of taxes, and that a very considerable amount of these assessments and arrears is certain to be collected; and,

Second. That the city holds bonds and mortgages on account of sales of real estate to the amount of $1,132,893.26; the proceeds of which, when collected, are applicable for an increase of the sinking fund held for the redemption of the funded debt.

On the other hand it is known that claims to a very considerable amount for services rendered and materials furnished to the several departments of the city and county government during the year 1871 and previously, are yet to be presented, and that the carrying out of such public works as are already in progress or are certain to be authorized, will also require further additional expenditures.

But in estimating the amount of these prospective requirements for expenditures, it should not be overlooked, that the amount of claims against the city yet to be presented is not likely to be in excess of the arrears of assessments and taxes yet to be collected; and further that the amount to be hereafter expended on account of public improvements cannot, with any regard for economy and moderation, ever prove disproportionate to the concurrent increase in the material resources of the city, arising from its certain and rapid increase in wealth, business and population.

So that making every allowance for contingencies, or any immediate advances on account of public improvements, the total present liabilities of New York city and county may be safely estimated as not in excess of *one hundred millions of dollars;* and further that the ratio which the liabilities of the city and county at present sustain to their assets and resources, is not likely to be changed for the worse in the future; certainly *not* if the safeguards against corruption and extravagant expenditure, suggested by recent experience, are by the Legislature authorized and provided.

INFLUENCE OF PUBLIC IMPROVEMENTS IN AUGMENTING THE SOURCES OF MUNICIPAL REVENUE.

As bearing upon the question of future municipal liabilities, on account of expenditures for public improvements, it is interesting to note the result which has followed one of the largest single items of expenditure authorized by the city for such purpose, and which at the time of its inception was denounced by many as a measure of indefensible extravagance. We refer to the expenditure incurred by reason of the construction of the 'Central Park;' the cost of which, up to 1869, is returned at $10,463,965.

Now an examination of all the facts pertaining to this expenditure will show, that so far from its having been a burden upon the city treasury, it has really proved a direct and important source of revenue. Thus, in 1856, before the park was commenced, the total valuation of real estate for taxation in the three wards around the park, the twelfth, nineteenth, and twenty-second, was $26,429,566; but in 1866, when the park had been practically completed, the valuation of the same property for assessment was returned at $80,070,415, an increase in ten years of $53,640,850. And further, the revenue received by taxation on this increased valuation, was sufficient, in 1870, to not only pay the interest on all the bonds of the city issued for the park purchase and construction, but actually afforded a surplus of over ($3,000,000) *three millions of dollars;* or a sum sufficient, if used as a sinking fund, to pay the entire principal and interest of the cost of the park, in less time than the park was in the course of construction.

ASSETS AND RESOURCES.

The maximum of the liabilities of the city and county, on account of indebtedness, having been thus estimated, we come next to the no less important consideration of the assets and resources available for the payment of such indebtedness; or the real tangible property which may be properly regarded in the nature of security or guaranty for the payment of such obligations of indebtedness as the city and county of New York may have lawfully issued.

Any valuation of the public property of the city must from necessity be very indefinite, inasmuch, as many of the items which would be included in any inventory — as the streets, sewers, lamps, public monuments and the like, are not susceptible of a money valuation; and if attached, would be practically of no benefit in the hands of a city creditor; but apart from these, it cannot be doubted that the value of the lands and buildings, wharves, water, ferry and market rights in possession of the city and county, and which can be readily convertible in open market into a money equivalent, is in excess of every present municipal or county indebtedness.

The valuation of the public property of the city of New

York, given by the mayor in an official communication to the board of supervisors August 16th, 1871, was $242,985,499.

In this valuation were comprised the following:

Markets	$4,767,374
Sundry lots of land	2,719,307
Wharves and piers	13,322,433
Public parks and squares	106,416,490
Total	$126,725,574

Next to the so-called public property of the city and county, the property most rapidly available for attachment and levy in case of a default in the payment of the principal or interest of the city's indebtedness, is the real estate of the city and county, the revenue derived from the assessment and taxation of which constitutes also the main element and strength of its municipal credit.

The valuation of this class of property for the year 1871, as returned by the commissioners of taxes and confirmed by the board of supervisors, was $769,306,410. But it ought to be clearly understood, that this valuation for tax purposes does not represent any fair valuation of the property assessed, or even an approximation thereto, and in great part for the following reasons:

The taxation required to defray the expenditures of the State, as a whole, is apportioned to the several counties of the State according to their property valuation; and hence there has been for years, and is now, a strife between the different boards of county officials to run down the valuation of property to the very lowest practical figure, in order to divert as large a proportion of the State taxation as possible from themselves, and throw it upon their neighbors; and as some of the counties in the interior of the State have been so successful in doing this as to actually reduce their valuation to thirty-twenty, and even a smaller proportion of the real and true value of the property assessed, a similar course of procedure has been forced upon the tax officials of New York, as a matter of necessity and local protection. And thus it has come about that, instead of the returned assessment valuation of $769,306,410 for 1871–2, representing the true market value of the real estate of the city and county of New York, in private ownership, it does not, in all probability, represent more than *forty per cent* of such true value; an estimate which, instead of being a conjecture, is based on a large amount of evidence, recently collected by an expert for the board of commissioners for revising the laws of the State relative to taxation.

The conclusion, therefore, seems warranted that the value of the real estate of the city of New York — public and private — which may be fairly regarded as an available security for the liquidation of the city and county debts, cannot be less than two thousand million dollars on which the present debt, as above estimated, namely, $100,000,000 would be equivalent to a mortgage of five per cent.

In this estimate, it will be observed that no account has been taken of the valuation of the personal property owned or held by citizens of the city or county of New York. The amount of such property valued and assessed for the year 1871–2 was $306,947,223. The investigations of the State commissioners lead, however, to the conclusion that this amount does not represent so much as *twenty* per cent of the real value of this description of property concentrated in the city of New York; or, in other words, that the true value of the personal property of New York city cannot be estimated at less than *fifteen hundred millions.* Much of this property, it must be acknowledged, can never be reached for assessment purposes by any law which the ingenuity of man can devise; or which any civilized people would tolerate in respect to execution; but, whether returned for assessment or not, it nevertheless exists, and by increasing the ability to pay, operates to decrease the real burden of taxation imposed on other property of a more tangible and accessible character.

It is also to be noted, that if the new plan of assessing personal property recommended by the State board of commissioners, and which is to be presented this winter to the Legislature in the form of a definite code, is adopted, namely, doing away with the direct assessment of individuals for personal property, and substituting therefor, as an equivalent, the assessment of individuals on a valuation of three times the rent or rental value of the premises by them occupied, the amount or equivalent of such property returned for assessment and taxation will be very greatly increased; and the financial resources of the city be thereby correspondingly augmented.

INCREASE OF NEW YORK IN POPULATION AND WEALTH.

In estimating the prospective ability of the city of New York to sustain and liquidate indebtedness the recent and prospective increase of the city in population and wealth constitutes an element of not a little importance. Thus, from 1820 to the year preceding the outbreak of the civil war, 1860, the average rate of increase for each successive period of five years, was 28 per cent; a continuous rate of growth, probably without precedent, in any country. During the period of the war, or from 1860 to 1865, the population of the city decreased 9¾ per cent. Since 1865, or during the five years from 1865 to 1870 inclusive, the gain in the population was 26¾ per cent; thus indicating that the average rate of increase experienced prior to 1860, was again likely to be approximated.

The increase in the valuation of the property of the city and county for assessment purposes, during the *ten* years from 1860 to 1870, was 82½ *per cent.*

The present increase in the value of the real estate of the whole city for assessment purposes, is estimated by experts to average about five per cent per annum.

RELATION OF TAXATION TO POPULATION AND PROPERTY.

It is also interesting to note the relation which taxation sustains to population and property in New York and some of the other leading cities of the country. The following data are derived from the most authentic sources.

City of New York. Population, 1870, 952,292; aggregate State, city, county and school taxes, 1870, $25,403,859; special taxes as estimated by officials, $2,000,000; total taxation, $27,403,859. Taxation *per capita,* $29.08.

Boston. Population, 1870, 250,526; aggregate of all taxation, 1870, $9,050,420; taxation *per capita,* $36.

Chicago. Population, 1870, 298,977; total taxation, general and special, 1870, $9,256,333; taxation *per capita,* $30.

But as in the opinion of some experts, the burdens of taxation in any community are properly represented by the relation which the aggregate of the annual levy of taxes sustains to the value of property assessed, attention is further asked to the following comparisons:

In Boston and Philadelphia real estate is returned for assessment at nearly its full marketable value. On this basis, the relation of taxation to real estate valuation in these two cities would be as follows:

Boston. Real estate valuation, 1870, $365,593,100; aggregate taxation, 1870, $9,050,420; ratio of taxation to real property valuation, 1 to 40.

Philadelphia. Real estate valuation, 1871, $491,844,096; aggregate taxation, 1871, $9,026,753; ratio of taxation to real property valuation, 1 to 54.

Cincinnati. Real estate valuation as made anew for 1871, $123,427,888; aggregate taxation, 1871, $4,004,035; ratio of taxation to real property valuation, 1 to 30.

In the city of New York on the other hand on valuation of real estate acknowledged to be only about 40 per cent of the real property, the ratio of aggregate taxation to real property valuation would have been in 1870, as 1 to 27; but if the valuation of the real estate of New York were advanced in proportion to the value taken for assessment purposes in Boston and Philadelphia, the ratio, instead of being as 1 to 27, would be much more favorable than in either of the cities above mentioned, or in the approximative ratio of at least 1 to 65.

It is therefore evident, that in comparison with the actual accumulated and tangible wealth of the city of New York, any liability, on account of indebtedness, which the city has yet incurred, or is prospectively likely to incur, is very insignificant; and, with a reasonably honest, efficient and economical government, such as public opinion and legislative authority, guided by recent experiences, seems certain to compel, there can be no good reason why the interest bearing debt obligations of the city should not be regarded as the most desirable of investments.

I am, yours, most respectfully,

DAVID A. WELLS,

Chairman Board of Commissioners for revision of the laws of the State of New York, relating to the assessment and collection of taxes.

To Hon. JOHN T. HOFFMAN, Governor of the State of New York.

I have also received a letter, dated 29th December, 1871, from Hon. Andrew H. Green, Comptroller of the city of New York, in which he says:

'Immediate legislation is essential for the maintenance of the credit of the city by the meeting of the obligations maturing early in January and to make provision for past claims which are due and which are of pressing importance. Equally important is prompt legislation to make provision for the maintenance of the government of 1872.

'As the law appears now (chap. 583, sec. 3 of 1871,) no authority exists to make appropriations until May next, leaving the four first months of the year 1872 without any provision by which payments of necessary expenses for these months can be made.'

I respectfully ask your immediate attention to those suggestions, and such early legislation with reference to them as may be necessary and proper.[29]

JOHN T. HOFFMAN."

January 3. To the Assembly: Transmitting the report of the Commissioners of Quarantine in response to his request that they examine into alleged abuses; and the answer of the health officer thereto. For report see Assembly Document, No. 10.

January 11. To the Assembly: Transmitting the annual report of the Adjutant General; also a letter received from Col. I. C. Woodruff of the United States Engineer Corps, asking the passage of an act giving consent of the State to the purchase by the United States of a certain tract of land in Clinton County for light house purposes, also the draft of the act proposed by him.[30]

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[29] Chapter 1, passed January 10, authorized the comptroller of the city of New York to pay bonds falling due in January, 1872, by funds to be raised on the issue of new revenue bonds.

Chapter 9, passed January 30, created a board composed of city officers, whose duty it was to estimate the amount which would probably be needed to defray the expenses of the public business in each department and the purpose thereof from the 1st day of January to the 30th day of April, 1872, both inclusive, and appropriations were to be made by city authorities for the payment of such expenses.

The bill was approved by the Governor, who on the same day it was signed sent to the Legislature a message containing some observations on the measure (see special message of January 30), and recommending an amendatory law correcting certain specified defects. Thereupon the Legislature enacted chapter 29, on the 9th of February, which among other things limited the amount of expenses which might be estimated by the Board created by the original act to $7,500,000, and authorized the comptroller to borrow that amount.

[30] The Legislature responded to this request by enacting chapter 369, on the 25th of April, which ceded to the United States jurisdiction over certain described land in Clinton County as a site for the light house keeper's dwelling.

January 15. To the Senate: Transmitting the report of a majority of the Commissioners appointed to revise the statutes.

January 15. To the Assembly: Transmitting the annual report of the commissioners of pilots.

January 19. To the Assembly: Transmitting the annual reports of the Lenox Library and of the Commissioners of Quarantine and the health officer of the port of New York.

January 22. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *January* 22, 1872.

"I transmit to you a memorial from the Stockbridge tribe of Indians now dwelling in the State of Wisconsin. They are the remnant of the once powerful tribe known as Mohegans, which, at the discovery of this country, occupied a large territory on the Hudson river.

They represent that the title to their lands in this State has never been extinguished by purchase. If they have any just claim upon the State, it should be promptly adjusted. I recommend an inquiry on your part into the subject.

JOHN T. HOFFMAN."

January 30. To the Legislature:

Approving a bill entitled "An act relating to appropriations and deficiencies in the city and county of New York, and the audit and payment of Salaries and claims in said city." [See note 29.]

"I have done this with reluctance. The bill appears to me to be faulty in its structure; yet not so perhaps as to preclude arriving at an intelligent construction of its intent. It is, however, seriously erroneous in principle. It provides not only for the audit and payment of claims accrued in the year 1871, against the city and county of New York, to an amount not to exceed the sum of $8,500,000, but also for appropriations and apportionment of moneys to carry on the local government for the first four months of the present year. The power to audit and pay last year's claims up to a fixed amount, and to make appropriations for the expenditures of the current year up to the 1st of May next, without limit as to amount, is conferred upon the three persons who now are or may hereafter be heads of certain departments of the city government, to wit, the comptroller, the president of the department of parks and the commissioner of public works, all of whom are appointees of the mayor, none of them having been elected by the people. The bill ignores the chief executive officer of the city and the legislative branch of the local government. A bill which seeks to carry on the government of a great city and county without the concurrence of its mayor and common council and board of supervisors, or any of them, and which places this great duty in the hands of certain subordinate officers, appointed by the mayor, without associating with them in it either the mayor or the legislative branch of the local government, or some representative of the latter, can be justified only by an extraordinary condition of affairs. A limit is placed by the bill upon the amount which is to be applied to the payment of claims against the city, however well founded these may be; but none is imposed upon the appropriation of money for current expenses. The omission of a limit upon the amount of public moneys which these three officers are authorized to appropriate cannot be justified; and is overlooked by me, now, in the faith that you will, by prompt supplemental legislation, affix one. No condition of things can render this omission necessary or proper.

Specific provision is made in the bill for providing means for paying the accrued claims by the issue of revenue bonds; but while the bill authorizes the appropriation of money for all the current expenses of the first four months of this year, it does not provide any means for obtaining the money to meet such appropriations, either by tax or by borrowing. There has been, in nearly all the tax levies for the city and county of New York, heretofore passed by the Legislature, explicit authority conferred to issue revenue bonds in anticipation of the receipt of taxes for the year, and there are also to be found in the laws general provisions authorizing the comptroller of the city to borrow in anticipation of the revenues of the city and county such sums as may be necessary to meet the ordinary expenditures of the local government for each current year, not exceeding the amount of such revenues, yet it may be, and I think is, a matter of serious doubt whether any of these general provisions will apply to moneys appropriated and to be expended under the extraordinary and exceptional powers conferred on the board created by this act, for a portion of the year only, no revenue for the year being as yet provided for or determined. An extraordinary condition of affairs does exist in the city requiring prompt remedy, and making necessary temporary and unusual measures of relief. The needs of the employes of the city government, and of many of its honest creditors are pressing; various important charities which are, in part, dependent upon the city government for the means of relieving the helpless under their care cannot be longer kept out of the money which has been promised them, without producing great and extensive suffering; and there is a necessity for some temporary means of carrying on the public business of the city until the Legislature shall determine what shall be done with reference to the permanent reorganization of its government.

If I were to return this bill for reconsideration by you, on account of the objectionable features I find in it, great delay might ensue in providing the means of paying the city's rightful creditors and of carrying on its government for the time.

The remedy for the existing condition of things ought to be prompt. While I think that, even under the necessity for immediate legislation on the subject, a bill more cautious and more in conformity with correct principles ought to have been prepared, I have signed this bill rather than risk further delay in furnishing relief to those having just claims on the city, and many of whom have suffered already from their non-payment; and in the confident belief that the extraordinary powers conferred by the bill will not be abused. I make this respectful communication to the Legislature to the end that I may not be held committed, by giving to this bill my signature, under the very extraordinary circumstances connected with it, to its objectionable features in other cases, if any such should arise hereafter; and I respectfully, but earnestly, recommend that the Legislature promptly pass a supplementary act limiting to such amount as to it may seem proper, the sum which may be appropriated by the board created by this act, for the expenses of the city government from the first of January instant to the first of May next, and also conferring specific power on the comptroller of the city to issue revenue bonds, payable out of such taxes as may be levied this year, for the purpose of providing means for the expenditures to be made in the period named."

January 31. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *January* 31, 1872.

"To a resolution, passed by you yesterday, requesting me to inform you whether bills had been presented to me purporting to have passed the Legislature, from which I withheld my signature, on the ground that certain provisions found in them had not in fact passed the Legislature, and to communicate any facts or circumstances within my knowledge having any material bearing upon the subject, I respectfully reply that there are only two instances of this nature of which I can now remember the particulars. One was a bill to authorize the New York River Road Company to construct certain railroads in the city of New York, sent to me at the end of the legislative session of 1869, which I declined to approve for reasons which will be found in the memorandum filed with the bill at the time; of which memorandum the following is a copy:

'Not approved. Amendments to this bill were made in the Senate, and it was sent to the Assembly for their concurrence therein. Some members of the House inform me that the Assembly did not thereafter act on it. The Clerk thinks it did not. The Assembly journal, nevertheless, shows concurrence; after which the bill should have been sent to the Senate to be signed by the President thereof. The usual message in such cases from the Assembly to the Senate is not found with the bill, and the Senate journal does not show that the bill was returned to it. In case of its return, the bill would have been sent by the Senate clerk to the President of the Senate to be signed, whereas the journal clerk of the Assembly admits that he took it directly to the President of the Senate, and obtained his signature; he must have done so by managing to place it among the bills then regularly before him from the Senate. This was irregular and contrary to positive orders from the Lieutenant-Governor and the Clerk of the Senate.

The Assembly journal clerk could have had no motive for carrying the bill himself to the President of the Senate, if, by regular action of the two Houses, it had been properly on its way to that officer. The Senate's journal is, no doubt, correct. The bill was not returned, as it should have been, to the Senate, and I decline to sign it.'

The other was the bill to supply deficiencies in appropriations for the support of the government, commonly known as the supply bill, passed at the last session. This bill, engrossed complete, together with the original memoranda of the conference committee, from which it had been engrossed, was, a day or two after the adjournment of the Legislature last year, brought to me by the Clerk of the House of Assembly, with the reservation that it was not to be considered as formally delivered, and with the request that before it was so delivered I would aid him in the comparison of the engrossed bill and such memoranda. I proceeded to examine the bill, item by item, and became satisfied that it was incorrectly engrossed as to three or four items found in it, which, as far as could be determined from the memoranda accompanying, had not been reported for acceptance by the conference committee, nor passed by the Legislature.

The Lieutenant-Governor and the Speaker of the Assembly were present, and were also satisfied that the bill was erroneously engrossed, in these particulars, and they erased their signatures from it. The bill was handed back to the Clerk of the House, was re-engrossed correctly, and sent to me for signature. Other instances have occurred, during the last three sessions, of bills being sent to me for approval, engrossed so as to omit material amendments, which were shown by the messages passed between the two Houses to have been adopted, and which messages accompanied each bill when it came to me. In other instances bills have been recalled from me for the express purpose of inserting in them some amendment or correcting some inaccuracy, and have come back to me again unaltered.

It is impossible for me to give, in all these instances, the titles of the bills or the particulars in which they were found to be erroneously engrossed. In the supply bill of last year one of the items found to have been incorrectly inserted was an appropriation of extra pay to Mr. Wasson, a former Canal Appraiser; another was an amendment authorizing the appointment of two additional commissioners for building the Elmira penitentiary; another was a counsel fee appropriated for Messrs. Buell and Erhardt, and the fourth a provision regulating the publication of the periodical statements of moneyed and other corporations. In relation to these particulars, I speak from memory and without any record. It was found on examination that one, perhaps two, of these items had not originated in either House, but had been brought forward for the first time in the conference committee.

It is obvious that if conference committees, which are appointed for the purpose simply of adjusting matters which the two Houses have already considered, and upon which they have been unable to agree, will undertake themselves to originate propositions and pass upon them, thus assuming the proper work of the Legislature, which they have no right to do, we may expect, in all such instances as those of appropriation bills consisting of many items, that there will be great difficulty in keeping the record correct. It appeared, also, that it is the practice of conference committees, in such instances, to submit their final report, not written out in full, but in the shape of a mere list of the many propositions upon which the Houses have disagreed, with a brief mark, generally in pencil, opposite to each one, such as the words ‘ out,’ and ‘ in,’ ‘ agreed,’ or ‘ disagreed,’ to indicate, and with nothing else to indicate, what the decision of the conference committee was as to each item.

In this shape it is read to the House, the clerk supplying the proper formal words in place of the marks ‘ out ’ and ‘ in,’ or the like. In this rough shape it is handed over to the engrossing clerks to guide them in their important duty, and in this shape it came to me with this supply bill.

When the bulk of an ordinary supply bill and the number of items found in it are considered, it is not surprising that errors in engrossing from these rough minutes should occur. If the Legislature would insist that in all cases conference committees should take time to have their report written out in full before submitting it to the two Houses, mistakes, as to the action of the committee, or of the Legislature on their reports, could hardly occur.

The vigilance of the Legislature and its committees should be sufficient to guard against inaccuracies of language, surreptitious insertion of matter not pertinent to the general purpose of a bill, errors in engrossing and the like. The Governor's duty in examining a bill submitted to him, should be limited to considering the general scope and purpose of the proposed law. Nevertheless, I have been obliged, in some instances, to refuse my signature to bills passed, simply because the language was careless and not suited to the purpose intended, and, in many more instances have, under a practice established before I came into office, returned bills to the Legislature at its request, after they had been delivered to me, for the purpose of enabling it to correct inaccurate or fatally defective language, rather than have a bill, the purpose of which was unobjectionable (perhaps important) lost.

It is obvious that if the Legislature will not see to it that its bills are properly worded, framed consistently with other laws, or correctly engrossed, that I cannot, as a matter of duty to the people, suffer these errors to pass, when I discover them; but I submit that this duty should not be imposed on me, and that the Legislature should insist upon its committees giving all the time necessary to the proper preparation and completion of bills. Out of the seventeen bills thus far received at the executive chamber this session, several are, in their structure and phraseology, open to very serious criticism. One has been recalled by the Legislature and amended, and two others I have been requested to hold and am holding so that they may be recalled for the same purpose.

It is, of course, impossible that the Governor alone should discover all the inaccuracies, inconsistencies and improper provisions which may find their way into the one thousand or more bills which it has become the habit to pass every year. The division of labor among the many committees of the two branches of the Legislature makes it much more possible for them to do this work.

I trust that this Legislature will effect a reform in this respect, and exercise more care and vigilance over both the character and the form of the bills they may pass; and by taking more time for the details of legislative work, will enact fewer laws and consequently better laws than have, for many years, appeared on our annual statute book. I repeat the recommendation made in my annual message, that all important bills, and especially the several general appropriation bills, may be matured as early as possible in the session, so that if objections occur to me as to any provisions or any items in them, I may have an opportunity to submit my objections to the Legislature to be by it considered and confirmed or overruled as to it may seem proper. The hurried character which the business of the Legislature assumes in the closing days of the session makes that a very unfit period for the consideration of bills of great importance or of so much detail as the general appropriation bills, which last need the earnest and deliberate attention of every member of both Houses.

I make these suggestions respectfully, believing that they are warranted by the spirit of the resolution transmitted to me, and I ask for them your careful consideration.

JOHN T. HOFFMAN."

January 31. To the Assembly:

Veto of a bill entitled "An act to legalize and confirm the election of Harrison Clute as superintendent of the poor of the county of Schenectady." [31]

"It seems to me very clear that this bill should not become a law for the following reasons:

The act to amend and consolidate the several acts relative to the city of Schenectady (chapter 385 of the Laws of 1862) provides, among other things, for the election of a supervisor for each ward of the city, who shall be a member of the board of supervisors of the county; and declares that the supervisors so elected shall have all the powers, exercise all the duties, and be subject to all the provisions of law then applicable to supervisors of towns.

One of the provisions of laws applicable to supervisors of towns, and to which, by the words just quoted, supervisors of wards in Schenectady were made subject, was that contained in chapter 80 of the Laws of 1853, which declared that no supervisor of any town should be elected or appointed to hold the office of superintendent of the poor.

At the time of the general election, held in the fall of 1871, Harrison Clute was a supervisor, representing the fifth ward of Schenectady, and the provisions of law, just quoted, in clear and unmistakable terms, forbade his election or appointment to the office of superintendent of the poor of Schenectady county. Nevertheless, he was a candidate before the people for that office at that election, and received, it seems, a majority of the votes cast. That election, so far as he was concerned, was in violation of law, and was void. The bill herewith returned is, of necessity, a recognition of the facts that the disability existed and that the election of Mr. Clute was illegal and invalid; and it declares that such disability is removed as of and from the day preceding that election, and the election 'is legalized and confirmed for the full term of three years from the 1st day of January, 1872.' In other words, it aims to legislate into a county office for three years a person who has not been legally elected thereto. It is, in effect, a legislative appointment of a county superintendent of the poor, and is in violation of the constitutional provision which declares that county officers shall be elected by the people or appointed by some of the local authorities of the county.[m] However proper it may be for the Legislature to legalize acts of public officers, or of officers *de facto*, invalid by reason of mere omission to comply with some provisions of the statute, it should never seek to give validity to anything done in open violation of law. It is not competent, I submit, for the Legislature to make legal now an election which was void at the time it took place, nor is it competent for it to appoint a superintendent of the poor of Schenectady county; and I submit, further, that this bill will not effect the purpose for which it is designed, to wit, curing the evil now existing in Schenectady county, of a person exercising the powers of an office to which his title is not good. On the contrary, the effect of the bill, if it becomes a law, will be to prolong for nearly three years the present improper condition of things, and it would be necessary hereafter to pass a law legalizing the acts of Mr. Clute, as *de facto* officer, for the whole term.

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[31] See People ex rel. Furman v. Clute, 50 N. Y. 451, decided December 10, 1872, where the Court of Appeals sustained the views expressed by Governor Hoffman as to the invalidity of the election at which Mr. Clute received a majority of the votes, but which election was declared to be void by reason of his ineligibility. The court held that the election was a failure, and that neither candidate could take the office.

Mr. Clute's title to the office is not good. I have no doubt on this point; nor has the Legislature, as is proved by its passing this bill. If there were any doubt, however, on this point, it is a question, I submit, which the Legislature should not undertake to decide; it belongs to the judiciary.

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[m] Const. 1846, art. 10, § 2.

The bill appears to me to present one of the worst forms of special legislation. It merely suspends the operation of a general law, in one county, for a brief period, and for the benefit of one person; and at the end of that period the general law is to be again in full force, as well in this one county as in all others.

It is of little importance whether Mr. Clute or some other citizen is made superintendent of the poor this year. It is of importance that a precedent such as this bill would establish should not prevail.

The election was, it is admitted, illegal and void; the office was consequently left vacant; the supervisors, by chapter 257 of the Laws of 1854, have power to fill the vacancy during the year only, the vacancy to be permanently filled by election of the people at the next general election.

I respectfully submit that this bill ought not to become a law, confident that, upon reconsideration, the Legislature will agree with me."

The bill was not passed over the veto.

February 1. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *January* 31, 1872.

"In conformity with the requirement of the Constitution,[n] I transmit herewith a report of the pardons, commutations, and reprieves granted by me during the calendar year 1871, stating the name of the convict, the crime of which he was convicted, the sentence and its date of the pardon, commutation, or reprieve.

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[n] Const. 1846, art. 4, § 5.

I have also appended to each case, for your information, a brief statement of the reasons which led to the exercise of clemency. Good conduct in prison has been made, in every instance, a prerequisite condition. More than eight hundred applications for pardon or commutation have been examined during the past year. Fifty-two pardons from State prison, thirty-two pardons from county jail or penitentiary, twenty-nine commutations, and five reprieves have been granted.

JOHN T. HOFFMAN."

February 5 and 6. To the Senate and Assembly respectively: Transmitting the annual report of the trustees of the Cooper Union for the Advancement of Science and Art.

February 6. To the Senate:

Veto of a bill entitled "An act to amend an act entitled 'An act to establish a recorder's court in the city of Utica, and for other purposes,' passed May 7, 1844."

"The bill proposes to increase the salary of the recorder of Utica to two thousand five hundred dollars. The Legislature in 1870 fixed this salary at eighteen hundred dollars. There is nothing in the events of the past two years to render insufficient now what was deemed to be and was sufficient then.

The bill imposes one-half of this salary as a charge upon the county of Oneida; the other half to be paid by the city of Utica. The common council of Utica approve of the bill, giving as one reason for so doing that only half the burden is imposed upon the city. The mayor and many citizens protest against it. The supervisors representing the rural towns have not approved of it or asked for it.

It seems to me there is nothing to justify a law obliging the local authorities of Oneida county to enlarge this salary; there being no evidence that the people interested desire it. I am satisfied that the people generally do not favor an increase of official salaries at this time, except when the same are clearly inadequate to the service performed."

The bill was not passed over the veto.

February 8. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *February* 8, 1872.

"I transmit herewith a draft of a code of laws relating to the assessment of taxes in the State of New York, prepared by the Commissioners on Taxation under an act of the Legislature, passed May, 1871, together with a report relating to the same.

Having, in my annual message, urged upon you an early and considerate examination of the system of taxation presented by the Commissioners, it is unnecessary for me to do more now than renew that recommendation, and at the same time to express my satisfaction with the labor and care which has manifestly been expended by the Commissioners in their conscientious effort to arrive at a uniform, equitable, and productive system of taxation.

JOHN T. HOFFMAN."

See Senate Document No. 26, for the proposed tax code.

February 12. To the Senate:

Veto of a bill entitled "An act for the protection of taxpayers against the frauds, embezzlements, and wrongful acts of public officers and agents." [32]

"The bill is as follows:

'*The People of the State of New York, Represented in Senate and Assembly, do Enact as Follows:*

Section 1. All officers, agents, commissioners, and other persons acting for or on behalf of any county, town, or municipal corporation, in this State, and each and every one of them, are hereby declared trustees of the property, funds, and effects of such county, town or municipal corporation, respectively, so far as such property, funds, and effects have been, are, or may be committed to their management or control; and every person residing in such county, town, or municipal corporation, and assessed to pay taxes therein, who shall pay taxes therein, is hereby declared to be a *cestui que trust* in respect to the said property, funds, and effects, respectively; and any co-trustees, or any such *cestui que trust,* shall be entitled, as against such trustees, and in regard to such property, funds, and effects, to all the rights and remedies provided by law of any co-trustee or *cestui que trust,* to prosecute and maintain any action to prevent waste and injury to any property, funds, and estate held in trust. Such trustees are hereby made subject to all the duties and responsibilities imposed by law on trustees, and such duties and responsibilities may be enforced by any co-trustee or *cestui que trust* aforesaid.

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[32] The bill for the protection of taxpayers was not passed over the veto, but another bill on the same subject embodying the Governor's suggestions was passed and became a law, chapter 161, on the 2d of April. The act was amended in 1880, chapter 435, and a new statute relating to taxpayer's actions with more elaborate provisions was enacted in 1881, chapter 531. The subject was afterwards included in the Code of Civil Procedure, sections 1925–1931.

Chapter 161, L. 1872, was sustained in Hurlburt v. Banks (1876), 52 How. Pr. 196, aff'd in 1 Abb. N. C. 172; Rogers v. Rochester, H. & P. C. R. Co. (1880) 21 Hun, 44.

§ 2. This act shall take effect immediately.'

Impressed, while examining the bill, with the belief that its provisions were open to serious objections, or, at least, to very grave doubts as to how they might affect, if it became a law, the vast interests involved in our numerous municipal governments, I addressed the following communication to the chief judge and the judges of the court of appeals:

'STATE OF NEW YORK,

EXECUTIVE CHAMBER,
ALBANY, *February* 12, 1872.

TO THE CHIEF JUDGE AND JUDGES OF THE COURT OF APPEALS.— A bill is now before me, for approval, of which a copy is annexed.

The bill affects all municipal governments in the State — cities, counties, villages and towns.

The intention of those who drafted the bill is unquestionably a good one, to wit: To provide additional protection against frauds by municipal officers. Two questions, however, have occurred to my mind in examining its language:

1. Whether the bill, if it become a law in the words now used, may not operate to divest every municipal corporation of the title to its property, and to vest the legal title thereof in the various officers, commissioners, agents and other persons who may have control and management of such property, or of separate and distinct portions thereof.

2. Whether it may not operate to give to the taxpayers the exclusive right to sue for wrongs done, or in order to prevent wrongs by municipal officers, taking away the right of action in such cases from the corporation itself, and from all public officers; and may not, in fact, interfere with suits now pending.

I assume, from the title of the bill, that the Legislature did not intend to make such radical changes; they certainly intended to add to — not to diminish — the remedies against this class of wrongs.

I do not ask the members of the court to say what their construction of the bill would be, if it came before them as an enacted law. But in view of the far-reaching character of the bill, and of the extensive complications and injury that might arise from a possible construction of its present language, I feel that I am justified (and trust that you will agree with me) in asking of you the favor to read the bill, with a view simply to your telling me whether there is not room for doubt on the points I have suggested, grave enough to make it wise that before it is enacted into a law the language of the bill should be amended so as to guard against such questions.

To this extent I can see no impropriety in your giving me your opinion, in view of the gravity of the questions involved; and I will be obliged by your doing so, if you see none.

JOHN T. HOFFMAN.'

Their answer is as follows:

'STATE OF NEW YORK.

COURT OF APPEALS,
ALBANY, *February* 12, 1872.

To His Excellency, JOHN T. HOFFMAN, Governor:

SIR.—I have submitted to my associates in the court of appeals the bill received from you, and which is before you for approval, entitled "An act for the protection of taxpayers," etc. (Senate bill, No. 58), and they are all agreed that serious questions might arise upon the bill in its present form, both as to the title of the property covered by the terms of the act and as to whether the municipalities are not divested of all title; and also as to the right of a corporation itself, or any of its officers, or any public officer, or any person whatever, other than a taxpayer, to bring an action in respect to the property, funds or effects mentioned in this act.

The terms trustee and *cestui que trust* have a well understood meaning, and ordinarily indicate a right of property, a legal title in the trustee, and a beneficial ownership in the *cestui que trust*, to the exclusion of all rights of property, legal or equitable, in any person or corporation other than the trustee or *cestui que trust*.

It is not intended to express an opinion that such is the legal effect of the act, but such effect may be claimed, and a bill more carefully prepared may obviate these objections.

Truly yours,
(Signed) S. E. CHURCH.'

As I said in my annual message, 'it is not an unusual mistake that in providing a remedy for existing evils, others likely to come out of the remedy itself are overlooked.'

In times of unusual excitement about abuses in the administration of public affairs, and when the demand for correction and reform is urgent and loud, it is especially important that those charged with the responsibility of legislation should move with great caution, and that the most careful consideration should be given to every bill providing new remedies or making great changes in existing laws.

I deem it unnecessary to enlarge upon the objections which have suggested themselves to me, confident that the Senate will concur with me in the propriety of subjecting the bill, before it is enacted into a law, to a further examination by the judiciary committee of the Legislature, to the end that such amendments may be made to it as will carry out, effectually, the important purpose which the Legislature had in view, as indicated in the title of the bill."

February 27. To the Assembly:

Veto of a bill entitled "An act to change the name of the First Congregational Church and Society of Poughkeepsie, New York."

"Chapter 322 of the Laws of 1870 provides a very simple and inexpensive method of changing the names of incorporations by the courts. This law was enacted for the purpose of relieving the Legislature from applications of this nature, and in order to avoid encumbering, unnecessarily, our annual statute book.

The Legislature, I doubt not, will, on reconsideration, agree with me that the purpose of the law of 1870 is a good one and should be carried out; which can only be done by rigidly refusing to pass special laws in every case covered by the provisions of the general act."

The bill was not passed over the veto.

February 27. To the Assembly:

Veto of a bill entitled "An act for the extension of the Utica, Chenango and Cortland Railroad." [33]

"The bill authorizes the Utica, Chenango and Cortland Railroad Company to extend its road from its present terminus to the Utica, Clinton and Binghamton railroad at Smith's Valley. The original route defined in the articles of association of this company, filed with the Secretary of State in 1870, was of the length of thirty-two miles.

The whole amount of capital stock subscribed was $32,000, being the minimum required by the general railroad law of the State as a condition to the formation of the company and the undertaking of its enterprise. The extension provided for by this bill is, I am informed, fourteen miles in length. If the bill were allowed to become a law, the company would, as to the extension proposed, be specially exempted from the salutary provisions of the general railroad act, requiring a certain amount of capital per mile to be subscribed before such associations assume the important privileges conferred on them by that act.

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[33] The Utica, Chenango and Cortland railroad bill was not passed over the veto, but another bill embodying the Governor's suggestions was passed and became a law, chapter 351, on the 24th of April.

I cannot, therefore, give the bill my approval unless it shall be so amended as to impose upon the company, in respect of their proposed extension, all the conditions which are imposed, and, as I think, wisely imposed, upon all companies by the general railroad law."

February 29. To the Assembly: Transmitting the annual report of the treasurer of the Sailors' Snug Harbor of the city of New York.

March 2. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *March* 2, 1872.

"I call your attention to the second section of an act of Congress, passed in 1864, (chapter 210 of the Laws of that year) under which an invitation was extended, through the President, to the States of the Union to provide and furnish statues, not exceeding two in number for each State, of deceased persons who have been citizens thereof and illustrious for their historic renown, or for distinguished civic or military services; which statues are to be placed in a hall in the capitol at Washington, set apart by Congress for the purpose, being the former hall of the House of Representatives. It has only recently been made known to me that this invitation was, in 1864, received from the President.

Some of the States have already complied with this request of the federal government; others have made arrangements for doing so; and it seems to me that our own great State ought not to be behind hand in contributing to this proper commemoration, at the federal capital, of men who have conferred distinction upon our country.

I commend to your consideration the propriety of making immediate provision for the accomplishment, on the part of this State, of its share of the work proposed.

Without wishing to interfere with the discretion of the Legislature in the matter, I respectfully suggest that, in case you decide to furnish the two statues, your choice may, with great propriety, fall upon George Clinton, who was the first Governor of the State and whose public services in the revolutionary period of our history were of marked merit; and upon Robert Fulton, who, in private station, contributed, in a very eminent degree, as well to the renown as to the prosperity of New York.[34]

JOHN T. HOFFMAN."

March 6. To the Assembly:

Veto of a bill entitled "An act authorizing the election of a board of auditors for the town of Lenox, Madison County, and empowering other towns to avail themselves of the provisions of this act."

"The bill proposes to create, in the town of Lenox only, a board of three persons, in addition to the regular town officers now provided by the general law; to abolish, in this one town only, the board of town auditors, which, by the general Statute, consists, in all towns, of the supervisors, the justice of the peace, and the town clerk; and to devolve all its powers and duties upon the new board of officers thus created. This special board is to be elected in the same manner and by the same constituency as are the members of the present auditing board, to wit: by the people at their annual town meeting. It is manifest that the Legislature did not deem this change in the powers and duties of town officers, and in the number of them, necessary or expedient in our town governments generally; otherwise it would have made the bill a general one, applicable to all the towns in the State. It is the general judgment of those conversant with such matters, so far as I can gather it, that this duty of auditing town accounts is, as a rule, performed by the supervisors, justices and town clerks of the several towns as rigidly and faithfully as any public duty in the State. This bill must have been passed with reference to some temporary abuse of power, supposed or real, in this one town. Against such abuses, the people have in their own hands an effectual remedy now, by choosing fresh men to office. The board of town officers consists of the supervisor, the four justices of the peace and the town clerk, six in all; at every town meeting the people can put out of office the supervisor, the town clerk and one justice of the peace, being one-half of the board. There are a few instances in which towns are authorized to have more than four justices of the peace; but Lenox does not appear to be one of these. All unfaithful members of the board of town auditors can be dismissed by the people at every town meeting, except those among the justices of the peace whose term of office may not terminate with the current year. If the local abuses, supposed or real, which this bill seeks to remedy, lie in improper auditing, by this last named class of officers, of their own bills, a remedy is provided in chapter 274 of the Laws of 1871, which authorizes any taxpayer to appeal from the board of town auditors to the board of supervisors of the county, in respect to the audit of any bill of a justice of the peace. It seems to me, therefore, that the special legislation proposed by this bill, making an alteration in the form of government of this one town, which the Legislature is, obviously, unwilling should be made in the other towns of the State, is unnecessary and unwise.

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[34] The Legislature responded to this suggestion as to statues for the memorial hall in Washington by enacting chapter 537 on the 6th of May, creating a commission composed of the Governor, Secretary of State and Erastus Palmer of Albany, to furnish a marble statute of George Clinton, first Governor of the State, to be placed in the capitol at Washington. The subject of the other statue was referred to the Legislature of 1873. The Legislature of 1873, by chapter 181, amended the foregoing statute by providing for a bronze statue of Governor Clinton. The act of 1873 also created a commission, composed of the Governor, Comptroller and Secretary of State, with authority to contract with Erastus D. Palmer of Albany for a bronze statue of Robert R. Livingston, the first chancellor of the State, to be placed in the capitol at Washington. See special message of Governor Dix of February 17, 1873, in which he suggested the name of Robert R. Livingston as a subject for the second statue, and also that both statues be in bronze, *post*, p. 555.

One section of the bill authorizes the electors of any town in this State to make the proposed law applicable to their own town, by a vote at town meeting. This provision appears to me to be unconstitutional° under the decision of the court of appeals, in the case of Barto against Himrod, 8 New York Reports, page 483; even if this were not so, the adoption of the provisions of the bill by some towns, and not by others, would create a diversity in the forms of town governments which is not desirable. It is the interest of the people that there should be uniformity in the town governments, to the end that the rights and duties of the people and of their officers may be readily and clearly understood from the general statute. The bill is special legislation, establishing a special form of government in one town, and is objectionable, in my judgment, for that reason. I feel confident the Legislature will, on reconsideration, take the same view of it."

The bill was not passed over the veto.

March 14. To the Assembly:

Veto of a bill entitled "An act to authorize the trustees of the Methodist Episcopal Church of Northville to convey real estate."

"The bill provides for the sale of the present parsonage house and for the investment of the proceeds in a house and lot adjoining the church.

The laws of the State, long ago, referred such matters

° Const. 1846, art. 3, § 1.

to the courts of justice. By the Revised Statutes the supreme court is authorized to make an order for the sale of real estate belonging to a religious corporation and directing the application of the moneys arising from the sale to such uses as the court may deem for the interest of the society.

The wisdom of this provision in our laws has never been doubted. The merits of applications of this kind and the propriety of the proposed use of any money arising from sales of the corporation property can be best ascertained by inquiries under the rules of a court of justice. If the Legislature, in any one case, overlooks the established policy of the State in this respect, it will encourage frequent and unnecessary demands upon its time for the discharge of a duty which properly pertains to the judiciary."

The bill was not passed over the veto.

March 15. To the Senate:

Veto of a bill entitled "An act for the relief of Cornelia Townsend."[35]

"The bill provides that the commissioners of taxes and assessments in the city of New York shall examine the assessment roll for widening Laurens street from Canal to Amity, and extending from Amity to Fourth, and thence across Washington square to Fifth avenue; and if it shall appear to them that the amount assessed upon the property of Mrs. Cornelia Townsend in Fourth street is unjust and excessive, as compared with the assessments upon other property in said vicinity, the said commissioners shall order said assessment roll to be corrected, and fix the assessment to be paid by Mrs. Townsend at such amount as, in their judgment, shall be right and just, and such amount shall be paid instead of the amount now on said assessment roll.

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[35] The Cornelia Townsend bill was not passed over the veto, but another bill devolving on the comptroller of the city of New York the duty of examining and adjusting the claim of Cornelia Townsend was passed and became a law, chapter 155 on the 1st of April.

The bill must have been passed, it seems to me, under a misapprehension, on the part of the Legislature, of the proper duties of the commissioners of taxes and assessments in the city of New York. They have to do only with assessing property for the purpose of the regular annual taxes; have no control of the assessment rolls made up in cases of street openings by commissioners appointed by the courts, and have no natural connection or familiarity with that business. They would be acting, in the duty by this bill imposed on them, without the sanction of an official oath, to set aside the doings of other officers who had acted under an official oath. It would be as proper for the Legislature to devolve on any other four persons, not in official position, the duty of reviewing and correcting the action of commissioners duly appointed by a court of law.

Moreover, if this one assessment is to be reduced in amount, a deficiency will exist in the fund necessary for the payment of the expense of the street opening, which deficiency must be made up in some way.

The commissioners of taxes and assessments have no power to reassess this deficiency upon the other owners of property benefited, nor to provide for it by authorizing the amount thereof to be paid out of the city treasury. The deficiency can be made up only by the city at large assuming the amount; in this the tax commissioners have no powers.

The case may be a hard one for the party seeking relief; but there is no proper way of giving relief, now that the assessment has been confirmed by the court, except for the city authorities to pay out of its treasury to the party aggrieved, by way of donation, whatever sum may be found by them to be just.

I doubt not that the Legislature will agree with me, when they come to reconsider the bill, that it ought not to pass into a law."

March 20. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *March* 20, 1872.

"I respectfully transmit herewith charges and specifications presented to me, alleging official misconduct on the part of Horace G. Prindle, county judge of Chenango county, with petitions accompanying the same from respectable citizens of said county, asking me to recommend the removal of said Prindle from the office of county judge and surrogate, according to section 11 of article 6 of the Constitution; and also copies of the proceedings of the board of supervisors of said county, with reference to said county judge and his proposed removal from office.

I have heard the counsel for the petitioners and for the said judge, respectively, upon these charges, some of which relate to alleged official misconduct during his term of office immediately preceding his present term to which he was elected at the last general election, and others to alleged official misconduct during his present term.

The constitution evidently contemplates that the truth and sufficiency of the charges, in such cases as this, shall be tried by your honorable body and not by the Governor. The final decision is to be made by you and not by me. My recommendation is, nevertheless, necessary to bring the case within your jurisdiction. It would seem, therefore, to be the duty of the Governor, if a *prima facie* case be made out before him, to send it to you for adjudication.

The charges in this case are presented by respectable citizens and substantially indorsed by the county board of supervisors, and are supported, many of them, by affidavits, *ex parte*, and other proofs.

I therefore recommend that you inquire into the charges so made, and if the truth and sufficiency thereof shall be established, that the said Horace G. Prindle be then removed from the office of county judge and surrogate of said county.[36]

JOHN T. HOFFMAN."

March 20. To the Assembly:

Veto of a bill entitled "An act to amend an act to incorporate the Port Chester Savings Bank, passed May 14, 1865."

"The bill provides that it shall be lawful for the bank to invest twenty per cent of its assets in county, town or village bonds, and also to lend ten per cent of its assets upon the pledge of town or village bonds, so that, in all, thirty per cent of its total assets may be in the class of securities above described. The general town bonding law has a provision in it allowing savings banks to invest ten per cent of their deposits in bonds issued to further the building of railroads; which was a general act applying to all the savings banks in the State.

It may be presumed that, on the passage of that act, applying, as it does, to all the savings banks of the State, the Legislature gave to the question involved in the present bill more careful consideration than would be likely to be bestowed upon it when presented, as now, in a case in which the interest of one bank only is involved.

The Legislature cannot be too careful in providing, by proper restrictions, for the safety of the money deposited with this class of institutions. They are created for the benefit of those who have no direct interest in speculative enterprises, and whose accumulations are savings from the wages received for labor. They should be managed exclusively with reference to the interests of that portion of our population who live by the wages of labor, and other persons of small means, and, to that end, the assets of savings banks should always consist of investments of the highest ultimate security, and of such as are least likely to fluctuate in value. It is also important that a large portion of their assets should be of such a nature that, at any time, or under any circumstances, they can be sold readily in the public market. While the bonds of towns and villages may be perfectly safe as a permanent investment, they are not of that class of securities which are daily bought and sold in our large markets, and cannot, therefore, be counted upon to be converted into money promptly, at a time of difficulty or of unusual demand upon the savings banks from their depositors. I have submitted the bill to the Superintendent of the Banking Department, who thinks it not advisable that the limitation now imposed upon the savings banks generally, restricting their investments in town bonds to ten per cent of their assets, should be enlarged, and I concur in his views.

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[36] The Senate met on the 14th of May, 1872, for the purpose of hearing the charges against Judge Prindle. At the conclusion of the trial the charges were dismissed.

The bill would be objectionable, in my judgment, if it applied to all savings banks; and is also objectionable because it specially exempts this one bank from the restrictions which have been by law imposed on all of these institutions.

Occurrences within the past year have shown that our laws cannot be made too rigid in restraining savings banks from investing the money of their depositors in any but the very best class of securities.''

The bill was not passed over the veto.

March 26. To the Assembly: Transmitting the annual report of the Commissary General and Chief of Ordnance.

March 28. To the Assembly:

Veto of a bill entitled "An act in relation to non-resident highway taxes upon certain lands in the counties of Hamilton and Warren."

" The bill provides that the county treasurers of Hamilton and Warren counties shall pay over to the Comptroller the amount of any highway taxes assessed upon townships Nos. 3, 9, 10, 11 and 29, in Totten and Crossfield's purchase in the counties of Hamilton and Warren, which townships are by the bill made a road district, and that the Comptroller shall pay such moneys over to certain commissioners named in the bill, to be expended upon the road from Washington Craig's, in the town of Wells, Hamilton county, to Rollin Russell's, in the town of Johnsburgh, Warren county.

Township No. 3 is distant more than five miles from the town of Wells, taking a direct line from the points in each nearest to each other. The road begins at some point in the town of Wells and runs continually farther and farther from township No. 3. There can be no propriety in the taxes assessed on this township being applied to the proposed road. Moreover, the eastern portion of township No. 9, the whole of township No. 10, and part of 29 are already subject to an assignment of their non-resident highway taxes to the purposes of a special road by the provisions of chapter 507 of the Laws of 1867. The repealing clause in this bill will not serve to avoid complication.

The commissioners are required by the bill to account to the Comptroller, and yet to give bonds to the county treasurer of Hamilton county. Vacancies occurring among them are to be filled by the county treasurer of Hamilton county. It seems to me proper that the vacancies should be filled by the Comptroller, as is provided in similar acts on the statute book.

The special laws so often passed in relation to roads in this region of our State are becoming complicated, and it is very difficult, with the changes that are from time to time made in enlarging or diminishing the area, the taxes of which are to be applied to special road purposes and in partially repealing the provisions of one act by some subsequent law, for the Comptroller to administer them. This class of legislation should not be encouraged; but the roads should be left to be worked out as best they may under general laws and under the regular authorities.''

The bill was not passed over the veto.

April 3. To the Legislature:

'' EXECUTIVE CHAMBER,
ALBANY, *April 3d,* 1872.

'' The telegraph to-day announces the death of its inventor, Samuel F. B. Morse. Born in Massachusetts, his home has for many years of his eventful life been New York.

His fame belongs to neither, but to his country and to the world; yet it seems fitting that this great State, in which he lived and died, should be the first to pay appropriate honors to his memory.

Living, he received from governments everywhere more public honors than were ever paid to any American private citizen. Dead, let all the people pay homage to his name.

I respectfully recommend to the Legislature the adoption of such resolutions as may be suitable, and the appointment of a joint committee to attend the funeral of the illustrious deceased.[37]

JOHN T. HOFFMAN.''

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[37] Each house adopted resolutions of condolence and appointed a committee to attend the funeral of Mr. Morse. The Assembly resolutions, adopted on the 4th of April, contained the following:

"That the lightning flash, first compelled from Heaven by mortal hands, through the instrumentality of a Franklin, utilized and rendered the handmaid and most efficient aid of civilization, by a Morse, will never perform a more painful and sad act than when it set the tune to the requiem over the grave of one who, by the control of its mighty power, is acknowledged and known of all men as one of the greatest human benefactors of his age or of the world in its history."

April 3. To the Assembly:

Veto of a bill entitled "An act to amend title twelve of the charter of the city of Albany, entitled 'the police department,' passed March 16, 1870."[38]

"Among the very earliest of the bills presented to me for approval, after I had come into office, was one relating to the police of the city of Syracuse, being now chapter 19 of the Laws of 1869. This bill was modeled after a law which I found upon the statute book in relation to the police of the city of Utica, chapter 414 of the Laws of 1867. In both cases there were four commissioners of police, whose term of office was four years, but divided into two classes so that half of them went out every two years, and who were to be chosen in the same mode as provided in the present bill, that is to say, every elector was entitled to vote for only one commissioner, the one having the majority of votes to be declared elected, and the one having the next highest number of votes to be appointed by the common council. The general provisions of both bills were well guarded, and the police commissioners were in each case made removable for cause in the same manner as sheriffs.

In 1870 the law of 1867 applicable to Utica was repealed. In Syracuse the law of 1869 is still in force. With more consideration of the principle involved in the Syracuse bill and with the experience of to-day, I would not have given it my approval. The method adopted for the selection of the commissioners in that bill and in the bill now under consideration, while it seemingly gives the election to the people, is, in fact, simply a designation by party caucuses or conventions, and the supposed ratification by the people is a form, and nothing more.

It is only on very rare occasions that, even in the municipal elections, more than two tickets are before the people between which to choose, to wit, the tickets nominated by the organizations representing the two great parties. If four persons are to be designated for certain offices, and every elector is restricted to voting for only two of the four, the people, in fact, can make no choice. The nominations made by the respective conventions of the two great parties are, under such a state of facts, conclusive. This method has been tried, on a larger scale, in the designation of the late board of supervisors for the county of New York. It has recently been given up there with general consent.

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[38] The Albany police bill was passed over the veto and became a law, chapter 186, on the 6th of April.

The bill now before me is more objectionable than those to which I have already referred, relating to Utica and Syracuse. In this bill four commissioners are to be designated at the municipal election now soon to occur, in the manner already described, who are all to hold office for four years. They are during this period to have the sole and absolute control of the police and, no matter how they may use this great power or abuse it, no provision is made for calling them to account or for removing them or any of them, however pressing may be the need of applying a corrective. For a period of four years the whole power of the police is to be in the hands of men designated by nominating caucuses or conventions, not elected by the people of the city, nor appointed by any public authorities, and subject to no correcting power in case of misconduct or malfeasance in office.

The extraordinary provision of the bill now under consideration for the filling of vacancies among the commissioners might lead to very inconvenient results. It is, that in case of a vacancy occurring, the members of the commission who shall be ' of the same political party ' as that of the person whose place has become vacant, shall nominate three persons and the members of the commission shall, within two weeks thereafter, choose one of these three to succeed to the vacant position, and 'it shall require the votes of all the remaining members for a choice.' In the meantime and until the vacancy be filled the commissioners 'are prohibited from making any removals from or appointments to the police force.' This puts it in the power of one member, by refusing to agree to an appointment for filling the vacancy, to deprive the commissioners of the power of enforcing necessary discipline among the members of the force for an indefinite period.

This provision, moreover, would be liable to great uncertainty in its construction. It is by no means impossible that in a period of four years the political associations of some of the members of the commission might be changed, and so there might be no one qualified to make a nomination or a serious dispute might arise as to which one of the commissioners would be entitled to make it. In this case or in case of an irreconcilable difference of opinion in regard to filling a vacancy, the affairs of the department would remain in confusion until the Legislature could be convened.

The main objections are, however, that the commissioners are to be subject during their long tenure of office, to no responsibility to superior authority for misconduct, and that they are to be designated in fact by party conventions, instead of being elected by the people or appointed by some local authority.

In the efforts to obtain non-partisan boards or commissions for certain public duties, we may go so far as to set aside altogether responsible government. For the acts of a board of police appointed as this bill provides, neither the mayor nor the common council of the city would be in any degree responsible, nor could either of the great political parties be held answerable. The commissioners would be acting under no sense of responsibility to the people, nor of accountability to the public authorities of the city or State; the only penalty hanging over them for misconduct would be the possible displeasures of the nominating conventions of their respective parties at the distant period of the expiration of their term of four years, or the possible intervention of the Legislature by a repeal of the law and the abolition of their offices.

I feel confident that, on reconsideration of this bill, the Legislature will agree with me that entrusting power to public officers, unaccompanied by an accountability clear, distinct and capable of prompt enforcement, is dangerous to good government."

April 10. To the Assembly:

Veto of a bill entitled "An act to authorize the canal commissioners to construct a bridge over the Champlain canal in the village of Fort Edward, in the county of Washington."

"The bill directed the Canal Commissioners to erect a bridge over the Champlain canal at a certain point in the village of Fort Edward, provided the Board of Canal Commissioners shall be of opinion that the State is under legal or equitable obligation to build said bridge.

The State Engineer reports to me that the State has never constructed a bridge at this point, and is not under legal or equitable obligation to build the one proposed by this bill, and that the Canal Commissioners would not be authorized to build it, if the bill became a law.

He further reports that if the bridge were to be built, the amount appropriated by the proposed act would be insufficient, in a large degree, to pay the cost of its construction."

The bill was not passed over the veto.

April 10. To the Assembly:

Veto of a bill entitled "An act granting the consent of the state of New York to the purchase by the United States of certain lands for the purpose of the erection of a custom house, court house, or other public buildings for the use of the United States at Albany, and ceding jurisdiction over the same."

"The bill is unnecessary. An act has already been passed (chapter 357 of the Laws of 1870), covering the subject and almost identical in language with this bill."

The bill was not passed over the veto.

April 24. To the Senate:

Veto of a bill entitled "An act relating to the town officers and local government of Newtown, in Queens County."

"The bill alters, in many particulars, the form of local government and the powers of the town officers in this one town.

I have felt it my duty to withhold my official sanction from bills of this character. It is not wise, in my judgment, for the Legislature to undertake to govern every town separately; its duty is best discharged by prescribing, in the general laws, as has been done, a form of government for this numerous class of municipalities, and then leaving the people of each town, who have ample powers to do so under present laws, to guard against wrongs and to remedy them.

If the people fail or neglect to do their duty to themselves in any one town, they should not be encouraged in applications to the Legislature for special relief. If defects can be shown to exist in the present form of town government, the remedy is to amend the general laws.

This bill provides that, in this one town, only one justice of the peace shall be entitled to preside over the town meeting, which right belongs, by the general laws, to all the justices; and as this presiding over the town meeting carries with it the power of appointing the third or minority inspector of elections for the three election districts of the town, at the general election, it places in the hands of one man a power which, under the general laws, it has been thought wise to confide in the whole body of justices, or a majority of them. It authorizes the inspectors of one of the three election districts into which the town is divided to be inspectors of election at the town meeting, taking this duty out of the hands of the regular town officers as provided by the general laws of the State.

It confers on the supervisor alone the power of filling vacancies occurring in certain town offices for filling which vacancies other provisions are now made by law. In addition to these and other special provisions, which, if desirable at all, should be applied to all the towns of the State, the bill alters, for this one town, the general assessment law of the State and the manner of its administration. It provides that the assessors of this town shall have power to issue process and compel the attendance of such taxpayers as they think ought to be assessed for personal property, and any person who fails to obey the summons, or answer any questions put by the assessors, shall be assessed at their discretion, and shall not be entitled to the right of review and correction of such assessment given by the general laws of the State.

It is obvious that most oppressive discrimination and injustice might be practiced under this power. Notice might be sent to a taxpayer while away from home, and he would be deprived of the right of having an erroneous assessment against him corrected, which his neighbors enjoy by law.

Moreover, it would put it in the power of the assessors to favor some, and do wrong to others of the taxpayers. Those whom they did not choose to summon would be left to enjoy the right of review and correction granted by the laws to all persons in such cases.

If this provision is a proper one, it should be incorporated into the general tax law of the State. It has no proper place in a law relating to one town. The provisions of the general law regulating the mode of levying and assessing taxes ought, if sufficient for other towns in the State, to be sufficient for Newtown.

It is claimed there are peculiar reasons for extraordinary legislation at this time, for this particular town, connected with the personal unfitness of the present justices for their duties. It is singular, if this be so, that this bill, while taking from the justices their general power to preside over town meetings, forbids any appropriation of money by the people of the town, unless the same shall first be proposed by the board of town auditors, of which board the justices constitute a majority of two-thirds.

Whatever be the facts, I am confident it is better to submit to temporary evils, until they can be remedied by the people in the ordinary method, than to seek to cure them by special laws such as this. Such laws tend only to encouraging the people in leaning unnecessarily on the Legislature, and in neglecting the active care of their own interests at home."

The bill was not passed over the veto.

April 24. To the Senate:

Veto of a bill entitled "An act for the organization and incorporation of the Lenox Farmers' and Mechanics' Association."

"All that the parties interested in this bill desire they can obtain by incorporating themselves under the general laws of the State; either under the law passed in 1855 for the incorporation of agricultural societies, or under the law passed at the present session of the Legislature relating to driving park and park associations, being chapter 248 of the Laws of 1872."

The bill was not passed over the veto.

April 25. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *April* 25, 1872.

"In compliance with a joint resolution of the Legislature, passed at the present session, I applied to the President of the United States, requesting him to appoint three officers of the United States service to revise the exterior lines of the harbor of New York, on the Brooklyn side. Herewith I transmit a copy of the reply of the Secretary of War, informing me that the commission has been appointed. It is necessary that an appropriation of money be made to cover the expenses of the commission.[39]

JOHN T. HOFFMAN."

The following is the communication referred to in the message:

"WAR DEPARTMENT — WASHINGTON CITY.
April 22, 1872.

To the Governor of the State of New York:

SIR.— The President having forwarded to me your request of the 10th instant, for the appointment of a board of officers to examine into and revise the exterior pier and bulkhead lines of the harbor of New York, on the Brooklyn side, with directions to comply with the same, I have the honor to inform you that the Chief of Engineers of the Army, the Superintendent of the Coast Survey, and Lieutenant Colonel Newton, Corps of Engineers, have been selected to constitute a board for that purpose, and will be directed to convene and report to you as soon as practicable.

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[39] The supply bill, chapter 733, appropriated $5,000 to defray the expenses of the commission appointed to revise the exterior lines of the harbor of New York on the Brooklyn side.

I would remark, however, in this connection, that as the department has no appropriation on which the board can draw for its expenses, the State of New York must defray them.

WM. W. BELKNAP,
Secretary of War."

April 30. To the Assembly:

Veto of a bill entitled "An act to reorganize the local government of the city of New York. [See note 13.]

"The bill provides a new charter for the city of New York, the main features of which are these: One board of forty-five aldermen, elected, nine in each Senate district, by a novel method called the cumulative vote, under which one man may vote nine times for one candidate and whereby a minority can elect its candidate or candidates against the will of the majority in the district; this board of aldermen to appoint four out of the five heads which are given to each of the administrative departments, except the police board, of which the common council appoints all the members and the mayor is made, by virtue of his office, an additional member thereof; the mayor has the power of appointing the presiding member of the boards of five who severally control the other departments. The law department alone is left with one head chosen by the mayor, comptroller and first judge of the court of common pleas, and removable by the mayor for cause.

When considering charters for cities and villages I have not felt myself justified in interposing the executive veto, where a difference of opinion existed between the Legislature and myself only on minor details, not involving important principle. This bill, however, is, in its main features, contrary to the established fundamental principles of good government, as recognized by the people of this country, and is likely to lead to very great evils. It vests in the common council the appointment of those who control administrative departments, thus stripping the mayor of power necessary to making his office of use to the public interests. The mayor is allowed one member of each of the several boards to which the administrative departments are entrusted, while four other members are chosen, some by the majority, and some by the minority of the common council. It seeks to establish, in one portion of the State only, in a single city, a revolutionary change in the mode of voting by the people, other than that which has always been practiced throughout the country.

In passing this bill, the Legislature could hardly have expected that I would approve of it. On the contrary, it must have anticipated, from the opinions expressed on the subject of city government in my annual message, that I could not give to it the sanction of my official signature. I regret that final action upon it has been delayed to so late a period in the session.

It has been stated in argument before me that, in its main features, this bill accords with my own views heretofore expressed. The fact is, it is in direct opposition to the recommendations of my annual message, which recommendations were founded upon eight years of official experience in connection with the government of the city of New York; and which, I have reason to believe, have received the approval of almost every intelligent man who has a practical knowledge of the workings of that government. The bill is understood by many as conferring ample power upon the mayor, as chief executive of the city. It, in fact, leaves him almost without power, and subordinate, in the matter of administration, to the common council, in whom is vested the appointment of those who control the several departments of the city government. All this is opposed to the best experience in matters of government, and, in fact, in all matters of private business. A single executive with responsibility concentrated upon him for the acts of his subordinates is the first condition of good administration in public or private affairs. Any other method of administration always results in negligence and abuses for which no one can be held to blame. It will be impossible, under this charter, to fix responsibility for maladministration on any man. The responsibility will be shared by so many that the usual moral restraint of conscience and of personal shame at wrong-doing will be weakened so as scarcely to be felt. A man is capable of shame and sensitive to public opinion and public odium. A large body of men countenancing each other and knowing that the blame of their joint action will be divided among many, are, as experience shows, much less likely to be influenced by these natural restraints upon human conduct. Every day exhibits to us men consenting to things being done by boards whereof they are members, which we know they would not do, if acting in their individual capacity and on individual responsibility. For the enacting of wholesome laws, for the careful interpretation and application of these laws to the rights of those subject to them, the deliberation of bodies of men, more or less numerous, are useful and necessary; but in the enforcement and administration of the laws, a single executive has always been found essential to good government. Our experience, in both our State and local governments, teaches that all changes taking away from the chief executive officer his control over and his full consequent responsibility for the general administration of affairs, have resulted in making things worse, not better. A fundamental principle of the American forms of government, and in fact of all wise government, is that the executive, the legislative and the judicial departments shall be separated from each other; that each has its proper sphere of action; and that no one of these shall be charged with or permitted to exercise the functions of one of the others. This charter throws aside this principle, recognized by the American people and approved by the experience of the world. Nowhere on this continent is it so essentially a condition of good government as in the city of New York that the chief executive officer should be clothed with ample power, have full control over all subordinate administrative departments, and so be subject to an undivided responsibility to the people and to public opinion for all errors, short-comings and wrong-doing by subordinate officers. The administration of the affairs of that great city should be in the hands of some one on whom the public gaze is always concentrated, and from whom it cannot be diverted on the plea that others share his responsibility and power. No machinery can be devised which will be a safe substitute for this personal, undivided responsibility of the chief executive, and this can only exist where the powers conferred are so ample and so completely his own that he cannot throw off upon others any share of blame, and so cannot escape having public odium concentrated upon him for all maladministration. Put any man in this position in that city and we have the strongest moral restraints upon him for good behavior, in addition to the legal restraints which can be imposed by providing for his removal from office by superior authority. Having done this, we have done all we can to secure good administration. We ought not to do less. Our people are so accustomed to rely on the chief executive to prevent and correct errors in administration, that after this charter shall have transferred the powers that belong to the mayor over to the common council, they will not very readily turn their eyes on the members thereof, but from force of habit, leave them unwatched.

It is amazing to me that men of intelligence and experience from the city, men who have lived in it for years and know something at least of public affairs there, should urge the confiding, substantially, of all administrative power to any body of forty-five men, no matter how elected; a body in which responsibility can be so easily evaded and covered up, so readily shifted from one to another, and is scattered and shared among so many that, under this system, responsible government will not, in fact, exist. It is amazing to me that men should urge this plan for administering the affairs of that great and wealthy city, who would not think of applying such a false method of administration to any of their great private enterprises, who would not think of so governing their ships, or their counting houses, their printing-houses, their factories, their work shops, or their farms, if they had them. The instincts of men are against this false method of administration through many-headed boards. Men, invariably in private business, entrust executive duties to one head, to whom subordinates in their several departments are answerable. No private enterprise can prosper under any other system. And, in my judgment, no government can be successful except under the same system, approved by the experience and practice of the civilized world and confirmed by the instinctive habits of men in all enterprises public or private, which require co-operation. When theories are put forward directly opposed to this experience and these instinctive habits, we may be sure, whatever the arguments made in their favor, that they are not the outgrowth of practical wisdom.

The Constitution of the United States affords us the best model of a government. It may not be perfect in all its details; for it is of human creation. But the country has done well under it for a century, and we are justified in saying, after our late civil war, that no form of government, in the history of the world, has stood, and successfully stood, so severe a test as ours. In the beginning, our State governments were, almost all of them, upon the same model; and all thoughtful men acknowledge that in departing from this pattern in the government of this State, as we have done in our existing Constitution, we have made a great mistake.

The city of New York contains a larger population than many of the States and larger than did our own State a few years ago. Its annual revenues and expenditures are larger than were those of the federal government thirty years since. There is no reason why, in seeking to devise a good form of government for that city, we should not adhere to the main features of the Constitution of the United States, which has worked so satisfactorily that probably not a man in the country would approve of altering it in these principal features. Hardly an American citizen could be found who would think it wise to transfer the great administrative power now vested in the President over to Congress. On the contrary, there is great fault finding, among the people, at the extent to which members of Congress, even now, interfere with the President's proper duty, by pressing their personal recommendations of candidates in order to influence appointments to administrative offices. The members of the common council in New York will exert all the influence over appointments which is consistent with the public good, without having the legal power of appointment, or any part of it, vested in their hands.

It is not many years ago that in the city of New York, the various administrative departments were practically under the control of the committees of the common council; the street department under the committee on streets and so on. Some among those who are now advocating this charter can remember how badly that system worked and how earnest and long continued were the efforts of the people to get this executive power away from the common council. The charter now before me is a retrograde movement; it goes back to a system long since condemned by the people of the city and by the Legislature.

It is admitted by those who advocate this charter that it would be unwise to place this control over the entire administrative duties of the government of the city in the hands of a common council, as heretofore elected. They rely on the new method of election proposed by them, to provide security against maladministration. They forget that the objection to this mistaken method of government is not obviated by a change of the men. No body of forty-five men, no matter of whom composed, no matter in what manner selected, can discharge the duties which pertain properly to an executive officer. The forty-five wisest and most honest men in the country would blunder in the effort, because of the want of prompt decision and unity of will, both of which are essential to vigorous administration. Any one of their number, acting alone, would do well where all of them acting together would be pretty sure to do ill.

The remedy which is relied upon against the evils of misgovernment under this charter, is the cumulative system of voting, which it introduces in order to secure fuller representation of the minority. It is claimed that this will result not only in a better class of representatives, but in greater power, on the part of the minority, to restrain the majority. Nine aldermen are to be elected in each district, and every elector is authorized, instead of voting once for each one of nine candidates, to cast, if he chooses so to do, nine votes for any one candidate, or to cast three votes each for any three candidates, and so on. This plan seeks to let the party which is in a minority in any political subdivision put into office its candidate, in spite of the opposition of the political majority. Experiments are now being tried, in one or two of the other States, of this cumulative method of voting as to some of their local elections; but these have been inaugurated so recently that they afford us no guide to sound judgment derived from actual practice and experience. It is proposed by this bill, that we shall try the experiment in the chief city of the continent, with its vast and complicated interests exposed to great injury if this new theory prove to be a failure. A city of a million of inhabitants is not the place for trying experiments in government, especially an experiment which many of the most thoughtful of our people believe to be visionary, impracticable, and unconstitutional. It would be much wiser for us to await the results of the trials now going on elsewhere.

This would not be the first time that a scheme to allow the minority to put men into office, in spite of the opposition of the majority, has been tried in this State. For many years the board of supervisors in New York was elected upon this principle. In that instance the minority were allowed, practically, to choose just half the board. This experiment, warmly and earnestly advocated at its introduction as a valuable improvement, resulted, as all admit now, in a disastrous failure, and was abandoned with general consent. There is this difference between that instance and the method now proposed, that there the minority was secured an equal share of power, while here it is expected they will obtain only a share proportioned to their actual numbers.

A very serious question arises whether this method of voting is in conformity with the provisions of the Constitution. Many of the ablest lawyers of the State have not hesitated to express their convictions that it must be held to be unconstitutional. It is said, and with great force, that the election as regulated by this charter is not an election in the sense in which that word was understood at the time the Constitution was made, and in the sense that it has always been understood among us. An election is the choice of a public officer by his receiving a larger number of votes than any other candidate in the district entitled to fill the office, all the electors being entitled to vote once at such election for a candidate for the place to be filled. It is suggested also that the Constitution guarantees that all electors shall be entitled to vote for all officers who are to be elected by the people, and that if any elector exercises his right to vote once for each of the nine aldermen to be chosen for his district his single vote as to any one of the candidates cannot be overridden by one of his neighbors voting nine times for some one man for the same place without an infraction of his equal right of suffrage as an elector under the Constitution.[p] There is, therefore, reason to fear that the election ordered under this charter might be declared invalid at a time when the Legislature is not in session, and that, meanwhile, great confusion may prevail in the affairs of the city. While, in ordinary cases a threat of litigation is not of itself a sufficient reason why the Legislature should refrain from passing a law or why I should refuse it my approval, yet, when the change to be made in the law is so revolutionary in character as it is in this case, when the doubts of its constitutionality are so grave and serious, and when complicated and injurious litigation is almost certain to follow, both the Legislature and myself are bound, by a prudent regard for the public interests, to abstain from making great innovations, not called for by any overruling necessity.

The fundamental principle of our government, familiar to the people, is that elective officers shall be chosen by a majority of the votes of the people entitled to take part in the choice. In all questions submitted to the people the majority decides. When any other principle is sought to be introduced, a revolutionary change of great magnitude is proposed, which ought not to be tried under the sanction of an act of the Legislature only; if so great a change is to be made at all, it should be done only with the careful deliberation which pertains to revisions of the Constitution.

Independent of the constitutional question is that of the expediency of this change in the method of choosing representatives. I am not disposed to take the ground that some form of minority representation may not prove to be an improvement. This has, nowhere, been tried long enough to prove anything. Whether this method will operate well or ill, in practice, is a question in considering which men, whose intelligence I respect, entertain enthusiastic hopes of good, while, on the other hand, many of equal intelligence anticipate very great evils from it. In the absence of actual experience, all opinions upon it are speculative merely. I suggest some of the dangers to which this system may, it seems to me, be exposed in practice.

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[p] Const. 1846, art. 2, § 1. See L. 1878, chap. 400, which provided for minority representation in the election of New York aldermen. The validity of the act was considered in People ex rel. Angerstein v. Kenney (1884), 96 N. Y. 294.

In all free governments the people divide themselves into two great parties. This tendency is so universal that it is not statesmanship to ignore it. Enactments will not overcome it. It is a natural, useful and wholesome division; it insures a large body of men among the people interested in and intent upon fault finding with the party in power, and struggling, by means of exposure of their errors, to bring over to the side of the minority enough of the electors to convert it into a majority, and so to take over the government. In politics, as in other things, it is agitation which purifies. Under this proposed new system of voting, the minority carry in their candidates without effort. The majority do the same. In a district where it is known that the political majority usually casts about two-thirds of the whole vote, there being nine aldermen to be elected, the caucus or nominating convention of the political majority will naturally concentrate all their votes upon six candidates; the caucus of the minority will concentrate on three. There will be no actual contest before the people. The decrees of the party caucuses will be absolute. Neither side will be in fear, lest, by putting forward unfit candidates, it may lose the election. For the two parties will be acting at the polls not against each other, but independent of each other. This condition of things, where the decrees of the party caucuses, on both sides, are final, naturally gives rise to secret combinations between the leaders on both sides for an agreed-upon division of power, against which combination the mass of voters might, under this system, struggle in vain. It is true there is an opportunity for a combination, in favor of one or two candidates, of independent voters, who may be regardless of party associations. But when the power of the regular party organization is considered, will not this influence of combinations of independent voters make itself felt to a very limited extent, and very rarely? Will it be equal to the power which voters, disposed to disregard their party associations on any occasion, can now exert, by temporarily voting with the opposing party, by way of rebuke to their own? Thousands of men in New York city exerted their power in this way last autumn. The political revolution in that city was wrought out by the tremendous power of the majority, not through any scheme of divided votes or of minority representation.

It may be a fatal mistake for us to be over-confident that the effect of this method of voting will be merely to add to the influence and power in politics of the more unselfish and more virtuous among the electors. The professional politicians may use it more skillfully and effectually than others, and it may entrench them in power beyond the reach of the popular majority or of popular condemnation. This system must tend to increase, very largely, the power in politics of men who have a personal following, in the shape of clubs and associations, formed to promote the success of one man in local politics. The weight of a club of this kind will be increased ninefold, a club of one thousand wielding nine thousand votes.

Nor is this to be overlooked, that this cumulative method of voting confers a higher money value on the ballot of any man who is corrupt enough to sell it. He can make his vote worth, to any one candidate, nine times as much as it is now. The inducement to pay and the inducement to take bribes will both be greater than now.

The Legislature must itself have looked upon this method of voting as nothing better than an experiment; if it had been satisfied of its merits and had had confidence in its working well, it would have applied the principle generally, wherever it could be applied, to local elections at least throughout the State.

It is right that the minority should be represented in all public deliberative bodies; and the American system of government makes provision for its representation. Every political subdivision sends a representative of its own choice to the general representative body; congressional districts to Congress, assembly districts to the Assembly, towns to the boards of supervisors, wards to village and city councils, and thus the minority in the State at large, being nevertheless the majority in many of the political subdivisions of the State, is enabled to secure its approximate share in the public councils. If subdivision has not been carried far enough in the city of New York to give the minority its proper share in the deliberations of the public councils of the city, a safe and not an untried remedy can be afforded by dividing the city into more numerous and smaller wards or representative districts. One board of the common council might, without inconvenience, be made to consist, if necessary, of as many members as the Assembly of the State. The minority would be sure thus to have, if it choose, a representation equal to performing the true duty of a minority, that of watching the government of the majority and of warning the public of any wrong-doing. Almost every great interest in the city could, if it chose, have its representatives in such a board. I owe this suggestion to a thoughtful member of the Assembly from the city of New York, belonging to the dominant majority in the Legislature, who has much practical knowledge of New York and its needs.

I have dwelt at so much length upon this question of minority representation, because it is the distinguishing feature of the charter, both in election of the legislative branch of the city government and in the choice by it of heads of executive departments; and this feature its advocates claim as its chief merit.

The bill does not limit itself in applying the minority doctrine, so called, to the election of representatives of the people in the public councils. It proposes to give the minority of the members of the common council the same power of selecting, independent of the majority in that body, a portion of the men who are to administer the government of the city in its various departments.

The minority ought to be represented as fully as possible in proportion to its numbers in the public councils. But the minority has not the right to govern. It is not wise that it should share, in any degree, in the actual administration of affairs. The majority must govern. The useful sphere of duty for the minority is to watch the governing party, to expose its wrong-doing, if any, to restrain it by this vigilance and exposure. Just so far as the minority is admitted to a share in the actual administration of government, to a share in executive duties, just so far is it weakened for the performance of its proper duty, that of vigilance over those in authority, just so far is its inclination to be vigilant lessened. It is only a minority out of power that will be faithful to the duties of a minority. Every member of the minority who is admitted to take part in the actual administration of public affairs, and all of his party whom he can influence, naturally acquire a tendency to defend the administration of which he forms a part, and, where they ought to be exercising a restraining power by their vigilance, they are often found helping to cover up things that need exposure. An administration that has its corps of defenders in both political parties will be much more likely to continue improper practices, than if it relies for defense only on its own party friends, and feels that the opposite party is ready, in solid ranks, promptly to assail it if guilty of wrong-doing. I believe the clear, complete and undivided responsibility of one or other of the political parties into which people, in all free communities, divide themselves, is essential to good government. For vigilance on the part of the people themselves, this bill proposes to substitute the services of a few individuals put into partial power by the minority as watchers, which will tend to make the people rely on these few, and indifferent to their own duty of vigilance in their own affairs. These few hired watchers may become screens for errors and neglect of duty on the part of their associates and themselves.

The government of the majority is the only government recognized by the Constitution of the United States and of the State. The majority controls and must control in legislation, and ought to be solely responsible for administration. When its representatives prove recreant to the trusts committed to them, a vigilant minority is quick to take advantage of the fact and in turn it becomes the majority. The existence of a strong, vigilant minority, which, not being a sharer of power, has no motive to defend those in power, but every motive to expose them when doing wrong, is quite as essential to honest and faithful administration of the affairs of the republic, as is the existence of the majority in whose hands the actual management of public affairs is placed. This cumulative method for appointing heads of departments may have the effect of fatally lessening, at once, the sense of responsibility on the part of the majority and the vigilance of the minority. The majority rule prevails not only in the governments of the United States and of the State, but also in all municipal and moneyed corporations. To substitute in its place a plan like the one proposed, untried as yet anywhere, in the great city of New York, seems to me to be a most dangerous political experiment.

Without entering upon too precise an examination of the details of the character, the following suggestions as to some of them may commend themselves to the consideration of the Legislature.

The finances of the city are to be put, by the charter, in the charge of a board of five persons, of whom the comptroller is to be one. He is to be appointed by the mayor; the other four by the common council. If a proposition were made to associate with the Secretary of the Treasury of the United States four persons chosen by Congress, who should have power to overrule his decisions, or if it were proposed to give to the comptroller of this State four coordinate comptrollers, chosen, whether on the majority or minority principle, by the Legislature, few would regard the proposition as one likely to lead to more directness of purpose, or greater efficiency and fidelity in management. No proposition has ever been made in any constitutional convention in the country like this one of trusting the administration of a financial department to a five headed board. Such an arrangement must, of necessity, render it difficult for the mayor to find a man fit for the position who will accept the office of comptroller, and equally difficult for a fit man, if he took it, to retain the place, and, at the same time, his own self-respect. For the comptroller will still continue to be looked upon by the public as responsible for the management of the department, while every decision of his, in small matters or great, is liable to be overruled by the votes of his associates, chosen by the common council.

The department of public works is organized in the same way, with five commissioners at its head, appointed one by the mayor, four by the common council; and this department is to be charged, in addition to its present extensive duties, with the duties now pertaining to the department of docks. It is a strange feature in the charter that the department of parks, the work of which is substantially completed, should be continued as a separate department, with five commissioners, while the department of docks, charged with a very important, necessary and extensive improvement, essential to the future business prosperity of the city, and long demanded by its merchants, is abolished and its duties handed over to a bureau in the department of public works.

The department of public charities has a very unwise and needless restraint placed upon its discretion by this charter. While authorized to grant aid, with the approval of the board of aldermen, in partial support of hospitals, asylums and other charitable institutions managed by private associations, it is provided that no aid shall be given 'to any institution that is under the management or control of any sectarian or religious denomination.' If all aid had been forbidden to any private charitable society or to any institution not maintained and controlled exclusively by the public authorities, I could understand the arguments by which such a prohibition might be defended. But the principle being once admitted that the city may aid such institutions, and so perhaps relieve itself partially from the care of the unfortunate and the helpless, I can see no wisdom and no justice in discriminating against those which, while relieving physical suffering and want, choose to furnish, in addition, for the old the consolations of religion and for the young religious instruction. No matter under what form this consolation or this instruction may be given, so long as it leads the old to look for comfort and the young to look for guidance to God, it is monstrous to discourage its being done, by positive enactments of law. It is according to our established notions of government, that the public authorities should do nothing purposely to promote the growth of one religion or another, should not discriminate in favor of any sect or form of belief. Neither is it just that they should discriminate in favor of unbelief and against religion in every form. There would be no justice in granting aid to a private asylum which shut out from itself everything in the shape of religion and at the same time refusing aid to another which did the same amount of useful work in that way of relief to physical suffering, because it did its work from religious motives and with religious sanction.

A hospital, for instance, founded by private wealth contributed from Hebrews, and therefore properly under the management of men of their ancient faith, is none the less useful to the city, for that reason, in relieving those suffering from wounds and sickness. Its doors are open to all; they must be so, for it is a condition of the aid given to any private charitable institution, under this charter, that the commissioners of charity may send to it, to be cared for, free of expense to the city, such persons as they think fit, in numbers sufficient to exhaust the whole amount of aid granted to it. Nothing is more natural than that persons who are already associated in one church or congregation should unite in these enterprises of benevolence; meeting constantly, the formation of a society for any specific purpose of the kind is so much easier a task. The association of men in religion always assumes, of necessity, a denominational form, and there is hardly a charitable institution of merit to be found which is not, wholly or partially, under denominational management or control. Take out of existence all the charitable societies of New York that owe their origin to religious motives and the religious associations of men, and scarcely one would be left. A deed of charity is none the less an act of practical good to the community because done by religious men or associations, be they Hebrew or Gentile, Protestant or Catholic. If, then, while doing all they can to relieve physical pain, to maintain the aged, to feed the hungry, to rescue the vicious, to protect orphans, the managers of these institutions offer prayers for the sick, the penitent and the dying, and cultivate the moral and religious element in the young, according to the forms with which they are severally familiar, how does that make them less entitled to aid, if aid is to be given, than institutions which are entirely free from denominational management or control?

The public officers should have nothing to do or say about the religious forms that prevail in any of these institutions, nor should they inquire whether any religion whatever is taught or practiced therein. The amount of aid which they may think it wise to afford them should be regulated by considerations entirely disconnected with their religious tenets or character. The power of visitation conferred by the charter upon the commissioners of charities, the reports required from the institutions themselves, and the agreement exacted that for any aid granted a full equivalent shall be rendered if required, provided sufficient guaranties against abuse, without this monstrous declaration in the law that good deeds are to be discriminated against, if accompanied by religious convictions or religious observances. The claims of any charitable society, if good at all, are none the less good because it is controlled or managed by men professing some religion.

By this charter the department of public instruction is to be forthwith entirely reconstructed; and, by the first of July next, the whole force of teachers employed, consisting of over two thousand five hundred persons, of whom two thousand are women, will cease to hold their places. Care has been taken to provide expressly that all the policemen now in service, all firemen, all the employees of the health and building departments shall continue in office; but for some reason no such care has been taken of the teachers. Their claim to remain in their present places, until good cause is shown for their removal, is quite as valid as that of the employes of other departments. They have earned their positions by capacity, industry and fidelity to duty.

The schools of the city are in a satisfactory condition. The rules provided by present regulations to protect the teachers from removal capriciously, or without good cause being established, are wise, salutary and just, and have been a means of encouragement for faithful attention to duty on the part of the teachers. To put them all suddenly out of employ by this sweeping enactment, to compel them to renew, before a fresh set of men, applications for the places they have already earned, to furnish new proofs of their fitness already ascertained, to force upon them afresh the weary task of gathering testimonials of character from those who know them, and appealing for aid to the influential, to subject them to the chances of being rejected from caprice or in order to make room for some whom the numerous new managers may want to befriend, is a cruel and undeserved wrong, inflicted upon an unobtrusive and faithful class of workers, for which there is no justification, and which will produce a fearful amount of anxiety and distress.

There is another provision of the charter which will work great injustice and positive deprivation of constitutional rights. The first election under it is ordered to be held on the third Tuesday of May. The first of May is the established day of the year in New York for changes of residence; and thousands of electors will, by this provision, be disfranchised at this election, because the Constitution requires a residence of thirty days previous to an election to enable an elector to vote in any district.* It is proper in this connection, however, that I should say that, since this bill reached me, two other bills relating to elections in the city of New York have successively reached the executive chamber; one fixing the spring election on the fourth Tuesday, the 27th day of May, and the other on the thirty-first day of May. If this last should become a law the objection just stated would be removed, but I have not yet been able to give it the consideration which some of its provisions demand.

The provision of the charter which excites in me the greatest apprehension is that which places the absolute control of the police, health, fire and building departments in the hands of a board of safety, composed of six members, all to be appointed by the common council, subject to no authority but theirs, and liable to removal by a two-thirds vote of that body, and to no other corrective power or influence; with power to fill all vacancies occurring in their own body, their regular term of office being six years, one-half of those first chosen to go out in three years. The mayor makes the seventh member of this board, but exerts no more power than any other one of his associates.

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* Const. 1846, art. 2, § 1.

This board is to have exclusive control over all matters connected with personal safety and the protection of life, health and property. It is to be chosen at two elections, three at each election, by the common council voting upon the minority or cumulative plan. It is obvious that in this board is vested practically the government of the city, so far as the most important functions of government are concerned, to wit, the protection of life and property and the preservation of public order. Yet this board is put more completely under the control of the common council than any of the others. A little examination will show that, under the provisions of the charter, it must become completely subject to the common council. For some unexplained reason, even the restraint of the minority principle, is practically taken off in reference to this board. The mayor has no power of appointment or removal of any one of them. He sits with them, as president and one of seven, each one having an equal vote. In all the other departments it is provided that, in case of the removal of any commissioner, the aldermen who voted for him shall fill the vacancy, thus enabling the minority who originally filled the place to retain in it always one of their own choice. In case of removal, death or resignation of any of this board of safety, the remaining members of it fill the vacancy for the unexpired term. In the other boards, any commissioner, no matter by whom appointed, may be removed by the mayor, upon assigning his reasons for such removal, or by the Governor, in the same manner as is provided for the removal of sheriffs. But no member of this board of safety, on whom are devolved duties and powers of the same kind as those confided to sheriffs, can be removed by the Governor upon charges of misconduct, or by the mayor. I ask every thoughtful man to consider why this power of removal should be given to the Governor and mayor in less important departments, and denied to them in this most important department of all? It is provided that any member of this board can be removed by a vote of two-thirds of the common council (and in no other way), provided that the cause of such removal be stated in the journal and the accused have ten days within which to answer the charges against him.

The best results the advocates of the minority method of voting hope from it is that the political minority in the city may, by means of it, secure one-third of the members of the board of aldermen. This is the best they expect; they look upon it as probable that the proportion of the minority will be less than one-third, as a general thing. It will be seen that, even with a minority of one-third in the board of aldermen, the two members chosen by the minority to the board of public safety may be removed by the two-third vote of the political majority, and the vacancies so created will be filled by the other four members of the board, who were appointed by the political majority. A political majority of two-thirds of the board of aldermen can fill every place in the board of safety; or a combination of any two factions in the board of aldermen, whose united members make a two-thirds majority, can appoint absolutely, and in spite of the minority, every member of this most powerful of the departments. The minority cannot secure for themselves one man in the board to watch its doings.

If the safeguard of the minority principle be good for anything, it ought certainly to have been retained over the department in which is vested the largest amount of power and the most dangerous kind of power. Abuses in the other departments can end only in waste of money. Abuses in the police, fire, health departments affect the daily security of life and property and of personal freedom. In the provisions relating to this board of safety, the charter is not only inconsistent with all established maxims of government, but is also inconsistent with its own cherished theory.

In addition to these objections, I call attention to the fact that since the passage of this charter, a bill has passed the Legislature and is now before me which confers upon this so-called board of safety, appointed by and removable only by the common council, the entire charge of future elections in the city of New York.

It is a marked confirmation of the correctness of the general instinct which leads us to rely on a single head for executive and administrative duties, that those who drafted this charter, while taking away from the mayor all substance of power and reducing him to the position of a mere ornamental head of affairs, propose, nevertheless, to enact in it the following provision (see section 24, subdivision 5): 'The mayor shall be responsible for the good order and efficient government of the city.' In spite of the theories which they had suffered to mislead them, they express in this a principle on which the whole government of the city, to be successful, must be founded, and with which every provision in a good charter must be made to conform.

The only argument that has been adduced before me to justify the provisions of the charter which make the mayor powerless, is that the people may, possibly, elect an unfit man to the office. If they should do so, is there any reason to believe that the common council would be any better?

There are other minor details in the charter to which objections might be suggested, but my main objections are to its lodging all the power of the city government, executive as well as legislative, in the common council, and to its making the great city of New York the subject of an experiment in political government, having the sanction, as yet, only of speculative opinions and opposed to past experience. The city is getting on tolerably well under its partially reorganized local government. Its credit is reestablished, its scale of expenditures is being reduced, and no complaint of want of fidelity in the administration of its departments, generally, is now made. Even if things were not in this condition, the most pressing necessity could not justify the subjecting of this great city to an experiment or running the risk of sacrificing it to a theory. Novelty is not necessarily reform.

I have watched closely the discussion on the subject of municipal government, and especially of this charter, in the public press. The New York Herald, in a recent issue, expressed so well the impression left upon my mind by an examination of this charter, that I cannot do better than quote its words. It says: 'It is a law experimental in its character, complicated in its machinery, and destitute of that directness and simplicity which, more than anything else, tend to secure good and honest government. Unless a great change has come over our politicians and office seekers, we are likely to see more corrupt bargains and conspiracies under this law than we have ever known under any former charter.'

I have reason to think that many members of the Legislature have voted for this act, with all of its novelties, under a feeling that the gentlemen from the city of New York who prepared it had looked well and carefully into the subject, and that, in many instances, members have been disposed to rely upon the judgment of these gentlemen as to what was needed and what was wished for in that city. I trust that, upon further consideration, the Legislature will agree with me that the bill ought not to become a law. The objections which did not, perhaps, occur to them, are urged by one who had several years' experience in connection with the government of the city of New York and who in presenting them has no other object and desire than to promote and protect its interests.

The most experienced legislator in the Assembly, one who has held the second office in the State, and whose practical acquaintance with the public affairs of the State, is of, perhaps, as long and constant continuance as that of any man living, avowed in debate his belief that the charter would prove to be a failure, and that he voted for it only in deference to the representative men from New York who were urging it, and on them he put the responsibility.

A venerable member of the Senate, who has himself been mayor of the city of New York, shares fully my worst apprehensions as to the disastrous evils likely to result to the city should this charter go into effect.

In the opinion of another gentleman who has been mayor of the city, a distinguished member of the political party opposed to my own, the provisions in the charter which lodge the whole power of the city in the hands of the common council are fatal to all hopes of good government under it.

I admit the importance of giving to our great city a good form of local government, and the duty of the Legislature in that behalf. But the people of that city have no right to claim, nor have any portion of its people the right to ask a form of government not in conformity with the general character of the governments which prevail elsewhere in the State and country.

I do not admit that misgovernment in the city is proof of the failure of republican government. Republican government, under a wise and well considered charter, with a proper distribution of power, has not yet been tried in the great metropolis. When the Legislature gives to New York municipal government in conformity with the general idea of American institutions, it performs its whole duty.

All further responsibility is on the people of New York city themselves. The people there have recently proved themselves capable of righting their own wrongs. If they culpably neglect their own affairs, if they will not give to their own political affairs the same attention which the rest of the people, in their several localities, are in the habit of giving, they must suffer the consequences. No self-acting machinery can be devised which will suffice to do the work which the people themselves are bound to do. Complicated machinery will serve only to invite combinations of designing men, whose operations can be concealed under it. Give to the city a chief executive with full power to appoint all heads of administrative departments. Let him have power to remove his subordinates, being required to publicly assign his reasons. The people will try the question whether he abuses this power of removal. Make him the head of the police in the same manner as the Governor is the head of the National Guard, with proper protection for the members of the force against removal while faithful to duty. Make him responsible personally for all waste or improper expenditure, by requiring from him, through the department of finance, an estimate of what money is needed for the support of the government and its various departments, before any appropriation is made. Give to the people full representation in the common council, and confine it to legislative duties, and exclude it from administrative. Give to it the power to reduce estimates of expenditure but not to increase them, the power to limit expenditure but not to originate appropriations. Give full power to the common council and the mayor to regulate the local taxes, to expend each year, what money they think fit, in cash expenditures, but limit rigidly by law their power to incur debts. If the expenditures be wasteful, let the people feel it in their taxes and let them apply the corrective. Make the mayor removable for misconduct by the Governor. All other provisions of this charter could be drawn by any one. They are mere matters of routine and precedent. Then the mayor can rightly be held, as this charter says he should be, 'responsible for the good order and efficient government of the city' and would feel himself to be so. Add such provisions as shall secure frequent publication of the expenditures and transactions of the city government, ready access of taxpayers to the city accounts and opportunities to the people to change their chief magistrate at short intervals and all the safeguards of good government are furnished.

With such a charter the people of the city of New York should be told in plain terms by the Legislature, that they must do their share, as the people do elsewhere, in looking after their local affairs and so contributing their part to the maintenance of republican government. From special legislation on the subject and from applications from year to year, for amendments to the charter, the Legislature should resolutely turn away.

I am aware that this charter has been prepared under the auspices of a committee of seventy prominent citizens of New York, who have recently done good public service in another way, some of whom have been conversant with public affairs, but many of whom are of the class that has heretofore neglected giving any time or attention to such matters. I have entire respect for the intentions of this committee, but cannot let its judgment control mine.

So convinced am I that great and disastrous evils to the city are likely to grow out of the enactment of this charter, that if I knew every man in the city of New York was clamoring for it, I would not give it my approval."

The bill was not passed over the veto.

May 1. To the Senate:

Veto of a bill entitled "An act in relation to elections in the city and county of New York, and to provide for ascertaining, by proper proofs, the citizens who shall be entitled to the right of suffrage thereat."[40]

"The bill proceeds upon the assumption that Assembly bill No. 118, entitled 'An act to reorganize the local government of the city of New York,' would become a law; and confers all the powers relating to the machinery of elections in the city of New York upon the board of safety, which was, under that bill, to be organized.

That bill having failed to become a law, the Legislature will, of course, have no desire that this one shall go upon the statute book, as it will serve no purpose.

The election law of 1870, applying specially to the city of New York, is still in force. It is very stringent in its provisions. It was passed with general assent, having received a nearly unanimous vote of the Legislature; and it is universally admitted that the two elections held under it in 1870 and 1871 were eminently fair."

May 1. To the Assembly:

Veto of a bill entitled "An act to legalize the acts and proceedings of William Seymour, a justice of the peace of the town of Greig, county of Lewis."

"My objections will be found in the following extract from the opinion of the Attorney General, to whom I referred the bill for examination:

'I understand that the term of the office of this justice expired on December 31, 1871, and that for three months thereafter he continued to exercise the powers of his former office, and that the acts so done by him are those sought to be confirmed by this bill. In my opinion this cannot be done. Justices of the peace are constitutional officers. See article 6, section 17, of the Constitution of 1846, and section 18 of the amendment of 1869. They must be elected by the people, and the Legislature cannot appoint them. The confirmation proposed by this bill is, in fact, an appointment of a justice of the peace and beyond the power of the Legislature.

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[40] The New York Election bill was not passed over the veto, but another bill providing for the conducting of elections in New York and for the registration of voters was passed and became a law, chapter 675 on the 14th of May.

'Possibly some of the acts of Mr. Seymour (such as acknowledgments of deeds) are of such a character that the Legislature might have authorized him to perform them as an individual and not as a justice of the peace, and as to such acts it may be that a power of confirmation exists. But as to his judicial acts he could only perform them in his character of justice of the peace, and as above stated. I am of opinion that no power exists to ratify such acts.

'The bill proposes to ratify all acts, and in my opinion is unconstitutional.'

In this conclusion of the Attorney General I concur."

The bill was not passed over the veto.

May 1. To the Assembly:

Veto of a bill entitled "An act regulating the sale of leaf tobacco in the city of New York."

"The bill applies only to the city of New York, and provides that no sales hereafter be made of leaf tobacco in that city, if contained in bales, cases or hogsheads, unless there shall be marked on such bale, case or hogshead, in plain figures, the actual gross weight in pounds at the time of sale, also the true weight in pounds of all the materials other than tobacco contained in and around the same.

It further provides that the seller shall in all cases weigh the tobacco in the presence of the purchaser, if demanded, and that any violation of the provisions of the act shall be deemed a misdemeanor punishable by a fine.

I believe if this bill, which proposes to change a long and well established custom of the trade, is permitted to become a law, it will result in great damage to a very large and legitimate business in the city of New York, and drive much of it away to places which are free from these restrictions and penalties. Aside, however, from this, my objections to the bill are:

1st. That it seeks to enforce upon a lawful business in the city of New York, restrictions which do not exist, as far as I can learn, in any other part of the country, certainly not in any other part of the State, and it is therefore indefensible special legislation.

2d. That it proposes improperly to interfere with the manner of the purchase and sale of leaf tobacco, and to make the same a matter of statutory regulation. The custom of trade, and the voluntary agreements of buyers and sellers, can and will regulate the sale of this and of all other lawful merchandise, better than the Legislature can do it."

The bill was not passed over the veto.

May 3. To the Assembly:

Veto of a bill entitled "An act to establish a special road district in Franklin county, and to appropriate certain nonresident taxes for the construction and repairing of roads in the same."

" The bill constitutes of the lands in townships fifteen and eighteen, in Macomb's purchase in Franklin county, which may belong to nonresidents, and the White Face Mountain tract, a road district, under charge of special commissioners appointed by it. All highway taxes assessed upon the lands so set apart are to be paid to the commissioners 'for the purpose of constructing and repairing roads in said district.' All highway taxes on lands paid to the county treasurers are to be paid by them to the Comptroller. A sum equal to all the arrears of taxes on said lands together with any sum that may be paid to the Comptroller is to be paid annually out of the State treasury to the commissioners, and also a sum equal to the assessed highway taxes of 1871.

The commissioners are directed to expend the moneys so received upon a road beginning in the north part of the town of Franklin and running south to a point in township No. 10.

My objections are: 1st. That no part of the road on which the money is to be expended runs through the townships or tract named in the bill. The White Face Mountain tract is separated from the two townships named in the bill by a distance of at least seven miles, and is distant still farther than that from any point in the proposed road. The territory from which the district is made up is disconnected and is all of it outside of the townships through which the projected road is to run. 2d. Townships fifteen and the White Face Mountain tract are already subject to the provisions of a previous act of the same nature as this, for another road; and even if this bill be regarded as repealing that act, the taxes of last year ought not to be included in the appropriations made by this bill.''

The bill was not passed over the veto.

May 3. To the Assembly:

Veto of a bill entitled "An act to amend an act entitled 'An act to incorporate the Industrial Exhibition Company, and to authorize said company to purchase real estate in the city of New York, and to erect a building or buildings which shall be used as an Industrial Exhibition,' passed April 21, 1870."[41]

'' The bill proposes (by section 11) to exempt from taxation, either municipal or State, the property and securities of the company from the time of the commencement of the building till the same is opened to the public, not exceeding five years.

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[41] The Industrial Exhibition Company bill was not passed over the veto, but an amended bill was passed and became chapter 690 on the 14th of May.

I refused my approval to a similar amendment to the charter of this company, passed by the Legislature at its last session. It is a company organized for private gain. It is authorized to do, within its proposed building, all legal and proper business. The enterprise may be one of great public interest, and perhaps of benefit to the public; yet the direct profits go to the stockholders.

Moreover, it would be possible for the company, under the provisions of this bill, to hold a large quantity of real estate in the city of New York and merely by beginning the erection of a building which they might never complete, to make a very good profit out of the five years exemption from taxes, which exemption, by the bill, applies not only to the land, but also to the securities of the company.

The bill proposes also another amendment (section 12) giving to the company permission to build over public streets and avenues, provided the travel on the same be not obstructed. This, if granted at all, should be subject to the supervision and dependent on the consent of the municipal authorities, who represent the people at large interested in such streets and avenues."

May 3. To the Assembly:

Veto of a bill entitled " An act to enable Timothy Baldwin, Jr., to take and hold real estate, and to release to him the interest and title in lands escheated to the State."

" The relief which this bill proposes to afford has already been given by chapters 141 and 358 of the Laws of this session."

The bill was not passed over the veto.

May 3. To the Assembly:

Veto of a bill entitled " An act to empower the levying of a tax in Union School District No. 1, in the town of Clarence, county of Erie, for the purpose of creating a permanent fund for the employment of teachers, and to regulate the investment and managment of said fund; also, to create the office of loan commissioner for said district, and to provide for the exemption of said district from taxes for the payment of teachers' wages." [42]

" The bill makes provision for a permanent school fund of thirty thousand dollars, for the district, one-half of which is to be contributed by gift, and the other to be raised by tax. The income thereof is to be applied exclusively to teachers' wages.

The second section provides that no tax shall hereafter be levied on the district for teachers' wages, so that nothing else than the income of the permanent fund will be available for paying these. This income will not exceed twenty-one hundred dollars. For the last school year the teachers' wages in this district amounted to three thousand one hundred and seventy-two dollars. The year previous to that they amounted to twenty-three hundred and fifty.

There is no restriction in the general school law upon the amount that may be raised by tax by a school district for teachers' wages. It is unwise and improper to make a limitation of the kind for this one district.

The seventh and eighth sections of the bill provides that it shall be submitted to the electors of the district whether the bill shall go into effect as a law. This provision is unconstitutional, declared so in 1849 by the court of appeals; see 8 N. Y. Reports, page 483.[q]

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[42] The Clarence school bill was not passed over the veto, but an amended bill was passed, and became a law, chapter 643 on the 11th of May. The new bill omitted the limitation as to taxation for teachers' wages, and also the provision requiring the submission of the law to a vote of the people of the district before it could take effect.

[q] **Barto v. Himrod.**

The Superintendent of Public Instruction thinks the bill ought not to become a law, and I concur in his views."

The bill was not passed over the veto.

May 6. To the Senate:

Veto of a bill entitled "An act supplemental to, and amendatory of, chapter 842 of the laws of 1868, an act entitled 'An act to provide for the transmission of letters, packages, and merchandise in the cities of New York and Brooklyn, and across the North and East Rivers, by means of pneumatic tubes to be constructed beneath the surface of the streets, squares, avenues, and public places in said cities, and under the waters of said rivers,' passed June 1, 1868; and of chapter 512 of the Laws of 1869, entitled 'An act supplementary to chapter 842 of the Laws of 1868 in relation to carrying letters, packages, and merchandise, by means of pneumatic tubes, in New York and Brooklyn, and to provide for the transportation of passengers in said tubes.'"

"It is with great regret that I interpose objections to any scheme which has for its apparent purpose the solution of the important and pressing question of rapid transit in the city of New York.

The history of this project is this: Originally, certain persons were authorized by the Legislature to provide for the transmission of letters, packages, and merchandise in and between New York and Brooklyn, through pneumatic tubes. They organized under the general mining and manufacturing law. To the corporation so formed, the privilege was afterwards given to convey passengers through these pneumatic tubes. On this company it is proposed, by this bill, to confer power to construct a tunnel under Broadway and other streets for the purpose of an underground railway, to be operated by steam locomotives, on which railway are to be conveyed passengers and freight.

By the present bill, the company is apparently restricted to the middle of the street, not approaching the curb nearer than two feet; but by the act of 1868, (chapter 1842), they are empowered to construct tubes under the sidewalks and through private vaults. The powers now granted are, of course, in addition to those before conferred, and therefore the whole width of Broadway is practically surrendered to this company for its purposes.

A bill somewhat similar to this one was submitted by the Legislature for my approval at its last session, and was returned by me without my approval to the Senate, with a message dated March 31, 1871, in which my objections were made known at length.* Many of the objections then urged by me are not done away with by the provisions of the act now proposed, and I respectfully refer to that message in connection with this bill.

I deem it proper to call the attention of the Legislature again especially to the fact that the chief engineer of the department of public works, a man of large experience and established repute for skill in his profession, decides that this project is impracticable, and that the undertaking of it will be detrimental to the interests of the city. As he represents the public, his opinion ought to be accepted in preference to that of engineers acting in behalf of the company interested.

I quote from his report to me (the proposed construction): 'Will cross the lines of the larger sewers now built in the city. Nearly all that part of the city between Fourteenth street and the Bowery, Chatham street and Broadway now drains into the North river, and a large portion of it through the sewer in Canal street. It will almost, of necessity, compel a new sewer or sewers to be constructed to carry this drainage into the East river, and as the surface of the ground at Canal street and Broadway is but twelve feet above tide level, but little descent can be given to the sewer, and consequently it must be of great size to effectually drain this descent. All of the sewers on Broadway will have to be removed, and the drainage provided for through side streets. The small sewers in the cross streets that would be cut in two will have to be rebuilt in every case, and the plane of inclination changed so as to descend in an opposite direction from that which they do now. In many cases this would involve the rebuilding the sewers for several blocks east and west of Broadway, and sometimes in the adjoining streets running parallel with Broadway.

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* *Ante*, p. 289.

'I give,' he continues, 'as my opinion as an engineer, that the plan is impracticable as well as detrimental to the interests of the city, and without a fair prospect of overcoming the problem of quick transit from one end of the island to the other.'

The present bill undertakes to give to this company an important part of the route, which is, by previous acts of the Legislature, assigned to another company for the same purpose of an underground railroad; a company possessed of means and capital to which large subscriptions of stock have been already made, and the promoters of which assure me that their work will be prosecuted without further delay.

Whether the present bill will be looked upon as operating so far to repeal the franchise heretofore granted to another company, or to give the two concurrent powers over one and the same route, it is obvious that, if not unconstitutional, it must lead to protracted litigation, and so, by suspending for a long time both works, will retard and embarrass rather than promote the solution of the question of rapid transit in New York city.

It seems to be the special purpose of all bills which have been passed in reference to this route to get possession of the valuable portion of Broadway lying between the Bowling green and Fourteenth street, where the facilities for transit are already many, making the great question of rapid transit through the whole length of the city secondary.

The company are required, by this bill, to finish the portion of their work up to Fourteenth street in two years, but are allowed five years thereafter; in other words, seven years, in all, to complete their proposed connections with the Harlem and Hudson River railroads. Nor is there any penalty or forfeiture as a guarantee against their stopping their work after the road shall have reached Fourteenth street; should they do so, nothing will, in fact, have been contributed towards furnishing the people with what is really wanted.

Assuming that the project is a practicable one, the bill proposes the granting of a most valuable franchise without adequate good being secured to the public in furnishing means of rapid transit from one end of the city to the other.''

The bill was not passed over the veto.

May 6. To the Assembly:

Veto of a bill entitled "An act to provide for the repayment of certain moneys paid to the commissioners of Mamaroneck Avenue, in Westchester county."

'' The bill directs that certain moneys, now deposited in the National Trust Company, in New York city, to the credit of two of the commissioners who, heretofore, had charge of work on Mamaroneck avenue, being assessments for benefit, shall be paid back to the persons from whom it was received. The damages awarded for land taken have not yet all been paid. The moneys which this bill seeks to control constitute a fund out of which the damages are to be paid. Under the decisions of the courts (see People vs. Supervisors of Westchester county, 4th Barbour, page 70), the parties have vested rights in the same awarded to them, of which legislation cannot deprive them.''

The bill was not passed over the veto.

May 8. To the Assembly:

Veto of a bill entitled "An act in relation to the board of excise in the city of Brooklyn, and to reorganize the same."

'' The bill provides for the appointment of three commissioners of excise, one by the mayor and two by the auditor and comptroller of the city. The commissioners so appointed are to take the place of the present commissioners (who are by the bill legislated out of office), and are to exercise all their powers in accordance with the provisions of existing excise laws, which remain unchanged. Chapter 175 of the Laws of 1870, contains directions for the appointment of boards of excise for all cities and villages in the State; such boards in the cities of New York and Brooklyn to be appointed by the mayor and common council, and to hold office for the term of three years. In these cities, commissioners of excise have been appointed in conformity with existing law, and their terms of office have not expired.

The law of 1870, under which they were appointed, makes provision for their removal from office for neglect or malfeasance, as in the case of sheriffs, that is, by the Governor. No complaint has yet been made to the Governor of any misconduct on the part of any of the present commissioners, and I assume, therefore, there is no sufficient cause for their removal. This bill seems to have no further purpose than that of effecting a temporary change of the persons who are to act as commissioners. It makes no permanent alteration in the mode of appointing the board of excise. It does not provide that the mayor, auditor, and comptroller shall exercise the power of appointment of commissioners at or after the expiration of the present term. The appointees would serve one term and then the power of appointment would revert, under the general law to the mayor and common council.

The bill takes away for a brief period from the mayor and common council powers eminently proper to be vested in them, and which the Legislature, with the deliberation attending the passage of a general law of the State on the subject, thought proper to assign to them. A temporary suspension of the provisions of this law in this respect appears to me to be objectionable as improper special legislation.''

The bill was not passed over the veto.

May 8. To the Assembly:

Veto of a bill entitled "An act to provide for holding courts of oyer and terminer for the trial of certain causes by justices of the supreme court, to be assigned for that purpose."

'' The bill seeks to establish a new order of things in the administration of criminal law, in certain cases. It is an outgrowth, undoubtedly, of recent developments in the city of New York, and is, no doubt, enacted with special reference to certain indictments now pending in that city. Nevertheless the bill applies, in terms, to the whole State, and to every judicial district and county.

It provides, in substance, that, in case of indictments for frauds committed by municipal officers in any county, all indictments pending in any court shall be transferred to the oyer and terminer, but that the oyer and terminer for the trial of such indictments shall be a specially constituted court, and shall not be held by the regular judge thereof or by any justice of the supreme court residing in the judicial district within which such county is situated; that it shall be held by some justice residing in some other district, who shall be designated by the court of appeals, if it be in session, if not, then by the chief justice thereof, on the motion of the Attorney General; and such motion is to be made without notice to and without the request of the district attorney in whose county the indictment is found.

It ignores the constitutional officer,[r] elected for the duty of prosecuting indictments, and excludes from the courts, in special cases, all the judges elected by and residing in the district where the offence was committed, and who, in all past time, have had, as was supposed, constitutional jurisdiction to try all criminal cases arising anywhere in the State.

Such provisions, even if constitutional, which I do not believe, are, in my judgment, unjustifiable and unwise; and they reflect, without excuse, upon the judges and district attorneys throughout the State. The class of cases in which, if occurring in their own neighborhood, they are by this bill excluded from performing their ordinary and proper duties, should stand on the same footing as other criminal cases. There is nothing in the history of the jurisprudence of the State which warrants this sweeping legislative exclusion of judges and district attorneys from their proper duties.

If it be said that in New York extraordinary frauds have been committed, and that the condition of the courts there is unsatisfactory, and that this bill is really intended only for cases of the kind in that city, although its provisions extend over the State, we must bear in mind that the frauds have been already exposed, that judicial officers there have, thus far, been fearless in this matter, and, moreover, that judges to whom objections, personally, have been made, are powerless now, even if they had the inclination, to prevent justice being done. There is no reason why courts held by the judges throughout the State under long established laws and in the ordinary way should not be relied upon to try all classes of criminal offenses. For the reason therefore,

First. That the bill is of doubtful constitutionality.

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[r] Const. 1846, art. 10, § 1, district attorney.

Second. That it is impolitic and unwise, and is unjust to the judicial officers and district attorneys of the several localities.

I must decline to affix my signature.

In times of excitement, whether it be the result of civil war or great abuses in the administration of government, we should be careful not to establish dangerous precedents. If legislative interference with the ordinary course of administration of justice is sustained, and the establishment, from time to time, of special tribunals for special instances of crime or accusation of crime is to be regarded as proper, a precedent may be established that may lead to great abuses. A specially constituted court might be organized in this or some other way for partisan purposes to work out mere partisan ends, or to accomplish some act of great wrong to private rights. Tribunals specially organized for particular cases have never been regarded as consistent with the general spirit of English or American jurisprudence.

Ample provision has already been made in the general statute of the State in reference to the judiciary, passed since the adoption of the judiciary article of the Constitution, for extraordinary emergencies.

Section 14 of chapter 408 of the laws of 1870 reads as follows:

'The Governor may, whenever in his judgment the public good shall require it, appoint extraordinary general terms of circuit courts and special terms of the supreme court and courts of oyer and terminer, and he shall designate the time and place the same shall be held, and name the justice who shall hold the extraordinary circuit or special term or preside in such court of oyer and terminer, and he shall give notice of such application in such manner as he may believe the public good requires.' "*

The bill was not passed over the veto.

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* This provision, relative to extraordinary terms, was afterwards included in the Code of Civil Procedure, § 234.

May 9. To the Senate:

Veto of a bill entitled "An act dividing the State into congressional districts."[43]

"The act of Congress for the apportionment of representatives from the several States provides that they 'shall be elected by districts composed of contiguous territory containing, as nearly as practicable, an equal number of inhabitants.'

The bill seems to be framed in plain disregard of the requirements of the act of Congress. The average population to a district should be on the ratio of the number of representatives assigned to the whole State, 137,000. There are created by this bill one district containing a population of only 92,700, another with only 99,500, two with each 130,000, one with only 110,000, and one with only 111,000. On the other hand, one district will contain a population of 118,000, another 178,000, another 172,000, and another 166,000. These instances suffice to show the great inequalities in the provisions of the bill.

It is, of course, impossible to avoid material differences in the population of the several districts. In making up the districts of contiguous territory, it is well to avoid dividing counties, except when a county is so large in numbers as to entitle it to more than one representative, or has so large a fraction of population beyond the number entitling it to one, that it would be gross injustice to disregard the practice. But if it be proper to avoid dividing counties, it is manifestly not proper to divide wards in cities as is done by this bill.

The unequal distribution prescribed by this bill is unnecessary, and cannot be justified as being the only way to avoid the disintegration of counties or other existing municipal districts. For great inequalities within a single county — the county of New York — are produced by dividing wards and attaching one part of a ward to one district, and another part thereof to another district. In New York city, under this bill, one congressional district will contain 187,700 of population, while another will contain only 92,700; that is to say, one district will contain more than twice as great a population as the other. New York city is justly entitled to one additional representative, if it were divided into seven districts of equal population; each one would contain a population of 134,613. There will be fifteen districts under this bill, outside of the city, which will contain, each of them, a less population than the above average of 134,600, yet New York is allowed but six members of Congress. In dividing the wards of New York city, it must have been difficult, if not impossible, for the Legislature to arrive, with any exactness, at the population of the districts created in such cases.

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[43] The Congressional apportionment bill was passed over the veto, and became a law, chapter 619, on the 9th of May. The session laws erroneously give the date as the 6th of May.

One instance, outside of New York city, will illustrate how easy it would have been to make the districts more fairly out of contiguous territory, and without dividing counties. By the bill Westchester, Putnam, and Rockland are to form one district, and they contain a population of 172,000; Orange and Sullivan constitute another district with 115,000 population; Dutchess and Columbia constitute another district, and contain 121,000 population. Here is great inequality among the three districts. All the seven counties form one mass of contiguous territory, and may be divided into three districts, each one being formed of contiguous territory, with a very much nearer approach to equality in population. Westchester left as a district by itself would have a population of 131,300, and is growing rapidly. Within the next ten years its population will be increased by many thousands, while many other portions of the State will probably remain about as at present. Columbia, Dutchess, and Putnam would contain, if put together, a population of 136,500; Orange, Sullivan, and Rockland would contain one of 146,000.

Other glaring and unnecessary instances of inequality could be pointed out, but these are sufficient to establish the fact that proper pains have not been taken to do justice to the people, nor to comply with the directions of the act of Congress.

I cannot believe that the wrong proposed to the city of New York, where, without increased representation to the city at large, wards are divided in making up districts, and where one district is assigned to a population of less than half that of a neighboring district, is the result of the best judgment of the Legislature.

The injustice of the whole apportionment for the State, as made by this bill, may be briefly shown. The territory embracing New York city, Long Island, and Staten Island, contains a population of 1,515,969, which is 9,398 in excess of the number required for eleven representatives, but only ten are given to it; the rest of the State contains a population of 2,866,790, which is not enough by 9,391, to entitle it to twenty-one representatives, and to this portion of the State are given twenty-two.

For the reason that the bill is in plain disregard of the rights of the people, and of the directions of the act of Congress under which the apportionment is made, I cannot give it my approval."

May 9. To the Assembly:

Veto of a bill entitled "An act to provide for the holding of a charter election in the city and county of New York, on Friday the 31st day of May, in the year 1872."

" The bill provides for the appointment of two commissioners of election, who are to exercise certain powers of appointment and removal of inspectors of a local election which, it contemplates, is to be held, in and for the city of New York, on the thirty-first of the present month of May. One of these commissioners is to be appointed by each of the two justices of the superior court of New York who were chosen by the people of the city and county of New York at the last general election. This is practically the same thing as conferring the power on any two persons described by name.

The Constitution expressly provides that all local officers in cities, counties, towns or villages, shall be elected by the electors of such cities, counties, towns, villages or appointed by some local authorities thereof.[a]

Doubts have been expressed by some whose opinions on such questions are entitled to peculiar weight, whether the superior court of New York is a local authority of the city in the sense of the Constitution. Last year the power of appointing police commissioners in Buffalo was, by an act of the Legislature, put in the hands of the presiding justice of the superior court of that city which is more strictly a local court than the superior court of New York. That has been repealed at this session.

Even, however, if the court should be held to be a local authority, certainly it is very clear that two out of the six justices of this court, if designated by name, would not constitute any such local authority under the words, or within the meaning of the Constitution. The powers given by this bill are not given to the court, nor to its presiding judge as its representative. They are bestowed on selected individual members of it, and are such as do not pertain to the offices they hold. The description — the two who were elected at the last election — is a personal description of two men as distinct and plain as if their names were given. The powers are not bestowed upon the office but upon the men. The powers are not to go, with the office, to their successors. The designation is not of the court, nor of the justices of the court, but of the two persons who were elected as a portion of the court, last autumn.

It is evident that the powers conferred by this bill are conferred on a person and not upon an office, and the holder thereof, for if either of these justices were to die, the power does not then, by any provision of the bill, devolve upon his successor in office. It is true that any vacancy occurring after the original appointment may, under the bill, be filled by the successor in office of the justice who made the appointment, but the original appointment of commissioners of election can be made only by the two persons elected last autumn. If either or both should die before the power was executed, no one could execute it. If the power were given to the court, it would survive, though all the members of the court were to die. Under this bill, if these two members of the court were to die, the powers granted by the bill would die with them; no one would be left to execute them. The power given is personally not official, and is, therefore, it seems to me, not authorized by the Constitution."[t]

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[a] Const. 1846, art. 10, § 2.

The bill was not passed over the veto.

May 14. To the Senate:

"STATE OF NEW YORK:

EXECUTIVE CHAMBER,
ALBANY, *May* 14, 1872.

"The Assembly, having sent me the following resolution:

'*Resolved,* That the charges and testimony taken in connection therewith, reported to this House by the judiciary committee. be transmitted to His Excellency the Governor, with the request, on the part of this House, that he recommend to the Senate to take proceedings for the removal of said John H. McCunn from his office of justice of the superior court of the city of New York.'

I respectfully transmit herewith a printed copy of the charges and specifications so referred to me, alleging official misconduct on the part of said John H. McCunn, and of the testimony taken by the judiciary committee of the Assembly in the case.

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[t] Const. 1846, art. 10, § 2. As to vacancies, see Const. 1846, art. 10, §§ 5, 8; and the Public Officers Law, L. 1892, chap. 681, § 20, subd. 7, last sentence (new office), and § 31.

I recommend that you inquire into the truth and sufficiency of charges so made; and, if the same shall be established, that the said John H. McCunn be then removed from office.[44]

JOHN T. HOFFMAN."

May 14. The Legislature adjourned without day.

June 18. The Senate being in extraordinary session, engaged in the trial of the charges against Judge Prindle and Judge McCunn, for which purpose it had been convened on the 14th day of May, the Governor transmitted to it the following message relating to charges against George M. Curtis, a justice of the New York Marine Court:

"EXECUTIVE CHAMBER,
ALBANY, *June* 18, 1872.

"I respectfully transmit herewith charges and specifications presented to me by a committee of the Bar Association of the city of New York, alleging official misconduct on the part of George M. Curtis, a Justice of the Marine Court of the city of New York, and asking his removal from office, in accordance with section eleven, article six of the Constitution of this State; also the documentary proof submitted to me in support of the charges, together with the answer of Judge Curtis thereto, and the proofs submitted in support of such answer.

After examining the same and hearing counsel, I deem it my duty to present the same to the Senate, and I recommend that you inquire into the charges so made, and if the truth and sufficiency thereof shall be established to the satisfaction of the Senate, that the said George M. Curtis be then removed from the office of Justice of the said Marine Court.[45]

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[44] The Senate met on the 14th of May for the purpose of hearing charges against Judge McCunn, and at the conclusion of the trial he was removed from office.

JOHN T. HOFFMAN."

ACTION ON BILLS AFTER ADJOURNMENT OF THE LEGISLATURE.

May 16.

Veto of a bill entitled "An act relating to the local government of the city of New York."

"After the veto of what is commonly called the 'Seventy Charter' had been sustained by the Legislature, this act relating to the local government of the city of New York, was introduced by Senator Palmer and without any considerable discussion of any of its provisions, except the one forbidding appropriations to what are called sectarian, or denominational schools, it passed the Senate, May third, the Assembly May seventh, and reached me only May eleventh, amidst the great pressure of business incident to the closing days of the session. I have taken the earliest day for considering whether it should become a law, and have decided to refuse my signature because:

First. Without discussing the merits or demerits of the general provisions of the bill, and both are very marked, it is sufficient to say that it orders the municipal election for Mayor, Common Council, School Officers, &c., on the 31st day of the present month, and in my judgment it is unwise and extremely dangerous to precipitate upon the people of New York so important an election on such short notice.

Second. The election, if held, would be conducted by inspectors and canvassers heretofore chosen. Under the operation of the Registry and Election law passed this session (Chapter 675, Laws of 1872) the laws under which they were chosen expire, and the official existence of the officers terminates June 1st, 1872. If for any reason the canvass of any part of the vote should not be completed on the night of the election, May 31st, it is, to say the least, very doubtful if it could be completed at all, for the reason that the canvassers would be after that day, by operation of law, out of office. Serious litigation would be likely to ensue between those who are now in office, and those who would claim under the new election law.

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[45] The Senate proceeded immediately to the consideration of the charges against Judge Curtis, and at the conclusion of the trial the charges were dismissed.

Third. Assuming, as I think must be the case, that no person who is not registered could vote at the proposed election, and that he must be registered in the election district in which he resides, a very large number of the citizens of New York would under the operation of said chapter 675 of Laws of 1872, be disfranchised at that election. No citizen who since the last registry has moved into another election district than that in which he then lived (and many thousands did so move on the first of May last) could vote; for section 37 of said chapter (which section takes effect immediately) provides that ' No person registered in one election district, can be registered in another in any other manner *than is provided in said chapter.*' No registry can therefore be had under any other law, and none can be had under the law of 1872 for the reasons that the sections which provide for a registry, do not take effect till June 1st, 1872, the day after the proposed election. There is no provision for a new registration for the election proposed to be held May 31st, and no time to make it, if there was. No voter, therefore, who has moved into a new election district since the last fall election can by any possibility vote this spring. An election which directly affects for good or evil the welfare of a million of people, and which affects indirectly the whole State, to be held on a fortnight's notice, and at which many thousands of citizens are thus disfranchised, cannot be held with my consent."

December 10.

Veto of the following bills:

Senate bill No. 360, "An act to incorporate the Washington Park Association."

Assembly bill No. 170, "An act to incorporate the Dairymen's Manufacturing Association of Perth."

Assembly bill No. 909, "An act to incorporate the Quincy Rural Cemetery Association in the town of Ripley and county of Chautauqua."

Assembly bill No. 877, "An act to incorporate the New Baltimore Chestnut Lawn Cemetery Association."

"Can be incorporated under general laws."

Assembly bill No. 869, "An act authorizing the trustees of the Quincy Rural Cemetery Association, in the town of Ripley, county of Chautauqua, to purchase additional lands to enlarge their burying grounds on lot number 14 of Holland Land Company's Survey."

"Supervisors have power. Chapter 280, Laws of 1852."

Assembly bill No. 694, "An act to amend chapter 368, of the Laws of 1865, entitled 'An act for the incorporation of societies or clubs for certain social and recreative purposes as amended by an act,' passed May 1st, 1865."

"Authorizes societies to be incorporated for detective purposes; is against public policy and good morals."

Assembly bill No. 962, entitled "An act to amend an act entitled 'An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes,' passed February 17, 1848."

"Extends acts to formation of corporations for mercantile and commercial purposes.
Similar bill vetoed in 1871."

Assembly bill No. 763, entitled "An act to incorporate the Buffalo and New York Oil Tankage and Transportation Company."

"Authorizes erection of buildings in New York City, Buffalo, and elsewhere, for storage of crude and refined petroleum without being subject to local regulations; also authorizes the company to take lands against will of owners, in like manner as for railroads."

Assembly bill No. 454, entitled "An act in relation to dower and to actions and proceedings for recovery of dower."

"Of doubtful policy and difficult of construction. At death of party entitled to dower, a life interest cannot have an ascertainable value."

Senate bill No. 426, entitled "An act to amend an act entitled 'An act to provide for the incorporation of villages,' passed December 7, 1847, so far as the same related to the village of Akron, in the county of Erie."

"Is not an amendment of the general law; is simply a legislative extension of boundaries of one village (Akron); supervisors have power."

Assembly bill No. 136, entitled "An act to prevent frauds in the sale of patent rights."

"Special legislation and improper. Alters the law as to one class of promissory notes."

Senate bill No. 243, entitled "An act to provide for the construction and improvement of the road from Piseco lake to Claflin's tannery in the county of Hamilton."

"Comptroller disapproves of phraseology as to the taxes which are to be included."

Assembly bill No. 533, entitled "An act to provide building sites for life saving stations on the coast of Long Island, State of New York."

"Defective. Not signed by President of Senate."

Assembly bill, not printed, entitled "An act to amend charter of the city of Rome."

"Increases salary from $800 to $1200, for which no good reason is shown and gives fees, which latter provision is unconstitutional."

Assembly bill No. 831, entitled "An act for the relief of George Howard."

"Similar bill vetoed in 1871."

Assembly bill No. 561, entitled "An act to authorize the Lockport Home for the Friendless to contract with the county of Niagara for the care and support of poor children of said county, and as to the trustees of said society."

"Supply bill for 1872, provides for this and all like cases.

Assembly bill No. 212, entitled "An act to appoint commissioners to make a survey of Richmond county and certain maps therefrom, and to mature and report a plan for laying out Staten Island, and for securing a water supply for the inhabitants thereof."

"Unconstitutional. Makes the law go into effect only if people of district vote for it."*

Senate bill No. 402, entitled "An act to incorporate the Safe Deposit and Trust Company of Buffalo."

Senate bill No. 238, entitled "An act to incorporate the Manhattan Loan and Trust Company of the city of New York."

Senate bill No. 207, entitled "An act to amend an act entitled 'An act to incorporate the Safe Deposit Company of the city of Rochester,' passed May 30th, 1868."

"See objections of Bank Superintendent."

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* See People v. Stout (1856), 23 Barb. 349; Corning v. Greene (1856), 23 Barb. 33; Bank of Rome v. Rome (1858), 18 N. Y. 38; Clarke v. Rochester (1864), 28 N. Y. 605; Gloversville v. Howell (1877), 70 N. Y. 287.

Assembly bill No. 550, entitled "An act to authorize the construction of a farm bridge over the Champlain canal for the benefit of Hiram Cramer, in the town of Saratoga, county of Saratoga."

"Party has a bridge now; if the purpose be to rebuild this, no law is necessary."

Assembly bill No. 647, entitled "An act to authorize the construction of a bridge over the Glens Falls feeder in the village of Glens Falls, New York."

"State Engineer reports no obligation, legal or equitable, on part of State to build the bridge."

Assembly bill No. 583, entitled "An act to amend an act, entitled 'An act to abolish the office of County Superintendent of the Poor in the county of Albany,' passed April 4th, 1858."

"Gives to an officer appointed by the city, authority over county; unconstitutional."[u]

Senate bill No. 425, entitled "An act to incorporate the Nyack Water Works."

"Private company for private profit authorized to take lands as for railroad or other public purposes."[v]

Assembly bill No. 903, entitled "An act amending the charter of the city of Binghamton."

"Defective. See letter of Superintendent of Public Instruction."

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[u] Const. 1846, art. 10, § 2.

[v] Const. 1846, art. 1, § 6. Water-works companies may acquire property by condemnation. Re Malone Waterworks Co. (1891), 38 N. Y. S. R. 95; Stamford Water Co. v. Stanley (1886), 39 Hun, 424; Re New Rochelle Water Co. (1887), 46 Hun, 525; Pocantico Waterworks Co. v. Bied (1891), 130 N. Y. 249.

Senate bill No. 139, entitled "An act amending an act concerning proof of wills, executors and administrators, guardians and wards and Surrogate's Courts, passed May 16, 1837, and May 11, 1869.

" The amendment made should have required a notice of *lis pendens* to be filed; without this, would be unjust to innocent purchasers."

Assembly bill No. 786, entitled "An act to amend an act entitled 'An act regulating the sale of intoxicating liquors,' passed April 11, 1870."

" The second section is a re-enactment of a bill relating to Brooklyn which was vetoed this session, and the veto sustained by the Assembly."

Senate bill No. 168, entitled "An act to amend an act entitled 'An act to amend and consolidate the several acts relating to the preservation of moose, wild deer, birds and fish,' passed April 26, 1871."

" Defective; amends an act of 1871, which has already been amended this year; no reference made to the latter act."

Assembly bill No. 894, entitled "An act amending an act to consolidate the several acts relating to the preservation of moose, wild deer, birds and fish, passed April 26, 1871."

" Repeals prohibition of general law as to shooting and hunting on Sunday in some counties."

Senate bill No. 413, entitled "An act in relation to Fordham and Pelham avenues in the towns of West Farms and Westchester, in the county of Westchester."

" The fourth section appoints the engineer of the road, taking the proper responsibility and authority from the commissioners."

Assembly bill No. 407, entitled "An act to enable the legal voters of any town, county, or city, to determine by ballot, whether the sale of liquors shall be prohibited."

"The bill, although passed by the Assembly on the 16th of April, was not definitely acted upon by the Senate until the 7th of May, and was not transmitted to me until the 11th of May, only two days (excluding Sunday) before the final adjournment. The first elections, provided for in this bill, are to be held on the 28th of May, little more than a fortnight from the time this bill reached me; too little time for the proper notice to the people for such elections, and for a full understanding or discussion of the provisions of the bill.

I deem it unnecessary, therefore, to consider other objections which have been suggested."

Assembly bill No. 391, entitled "An act to enable life insurance companies to restore impaired reserve, and also to transfer their business."

"See objections of Superintendent of Insurance Department, on file."

Assembly bill No. 783, entitled "An act authorizing the sale of school house in School district Number Four, town of Huntington, and providing for application of proceeds of sale."

"Bill defective. Subject matter does not correspond with the object as expressed in the title."[w]

Assembly bill No. 848, entitled "An act amending act of April 10, 1854, to provide for a deputy clerk for the Court of General Sessions of Kings County."

"Largely increases salary of Deputy Clerk of General Sessions of Kings County."

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[w] Const. 1846, art. 3, § 16.

Assembly bill No. 739, entitled "An act for the relief of the New York Tunnel Company."

"Bill is defective in phraseology."

Assembly bill No. 508, entitled "An act requiring agents and wardens of State Prisons to keep a detailed account of purchase and sales made by them."

"Recalled for amendment, and amendments not made to conform to Governor's suggestions."

Assembly bill No. 830, entitled "An act amending the several acts in relation to State Prisons."

"Reduces prison force to an unjustifiable extent."

Assembly bill No. 779, entitled "An act amending act to provide for establishment of Free Schools in Newburgh, passed April 6, 1852."

"Bill names an additional trustee by act of Legislature."[1]

Senate bill No. 438, entitled "An act amending an act to prevent the furtive possession and use of slung shot and other dangerous weapons, passed April 20, 1866."

"Impolitic legislation, and not likely to be effective."

Assembly bill No. 753, entitled "An act providing for keeping, in duplicate, certain books in the office of the Clerk of the city and county of New York, in which judgments and decrees are required, by law, to be docketed."

"Bill not necessary, and county clerk says that office accommodations are inadequate to carry out its provisions."

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[1] Const. 1846, art. 10, § 2.

Senate bill No. 384, entitled "An act to organize a Board of School Commissioners in and for the city of Troy."

" The theory of this bill is to make a non-partisan board of school commissioners, but the fourth section of the bill is so drawn as to defeat this purpose."

Assembly bill No. 457, entitled "An act authorizing the Canal Commissioners to settle for work done under the contract for raising the towing path on sections 12, 13, 16, 22 and 23 of the extension of the Chenango Canal."

" Bill defective, subject of bill does not correspond with the object as set forth in the title."[y]

Senate bill No. 952, entitled "An act to amend chap. 110, of the Laws of 1871, in relation to the fees of county treasurers."

" Title of bill does not correspond with subject matter. It contains only a special provision relating to a single county, (Ulster)."

Senate bill No. 334, entitled "An act to consolidate the government of the city and county of New York, and further to regulate the same."

" Second section of this bill is very loosely drawn, and would lead to serious embarrassments and complications. This is the opinion of an able jurist whom I have consulted. Bill is also defective. No certificate of its passage by the Assembly."

Senate bill, not printed, entitled "An act to authorize the Buffalo, Corry and Pittsburgh Railroad Company, to extend its road and change its name."

" Bill does not state what the new corporate name shall be, nor is the general railroad act applied to the extension."

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[y] Const. 1846, art. 3, § 16.

Senate bill No. 282, entitled "An act amending an act for the support and relief of the poor, and for the government of the Poor Department in the county of Erie."

"The law as it now stands, makes the Superintendent of the Poor removable by the appointing power; this bill allows the present board of supervisors to appoint for a fixed term of three years without power of removal; the law is better as it is."

Senate bill No. 522, entitled "An act amending chap. 739, Laws of 1857, to authorize the formation of town insurance companies."

"General act amended as to a particular town Fire Insurance Company, which the title of bill does not express."*

Senate bill No. 451, entitled "An act in relation to the publication of notices and citations."

"A similar Assembly bill was returned for amendment; and after amendment by Assembly, the Senate failed to concur therein."

Senate bill No. 396, entitled "An act further to amend the charter of the city of Watertown."

"Increases pay of city officers, and abolishes some offices necessary to the city government."

Assembly bill No. 537, entitled "An act to amend General Drainage act of 1869."

"Bill not to apply to Jefferson County, nor to any incorporated village, leaving villages without necessary power to conduct drainage proceedings. Also repeals all special drainage acts, except those relating to draining ponds."

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* Const. 1846, art. 3, § 16.

Senate bill No. 329, entitled "An act to clear and regulate the Court House property of the county of Kings."

"No necessity for this bill. Supervisors have full power and are now exercising it."

Assembly bill No. 755, entitled "An act to amend chapter 412, Laws of 1864, to amend 'An act to provide for the registry of liens and incumbrances upon boats navigating the canals and rivers of the State."

"Objections: It is bad policy to change a law so old and well understood, unless the innovation will result in an improvement. Boatmen, forwarders and others interested in canal boats, have become familiar with the present law, and the proposed change would cause great uncertainty, mistakes and confusion.

2d. The proposed change would render it much easier to fraudulently cover up property, and greatly increase the chances for defrauding the creditors of the mortgagor and subsequent purchasers and mortgagees in good faith.

3d. Under the present law, searches as to titles of canal boats in the Canal Department extended back for one year only; under the proposed change, after the lapse of a few years, it would be almost impossible to ascertain the title to a canal boat. I am informed that mortgages are very seldom satisfied on the records of the Canal Department when they have been paid. The new law does not compel mortgagees to satisfy them on the record, when paid. Under the present law this is not necessary, for if mortgages are not renewed yearly they are, in effect, cancelled; but under the proposed change a mortgage remains a lien forever unless a satisfaction piece is filed in the Canal Department. A search, extending back many years, would in many cases show a large number of mortgages against boats and the purchaser could only be certain as to the title after communicating with a large number of mortgagees scattered all over the country, involving much time and expense. After a few years it would be very unsafe to buy, and almost impossible to sell canal boats, if the change were made."

Assembly bill No. 354, entitled "An act to amend chapter 150, of the Laws of 1837, in relation to U. S. Deposit Fund, so far as relates to the county of Jefferson."

" Comptroller objects. The county of Jefferson has invested about $30,000 in war bonds of that county, which are filed with the Comptroller.

Should these be withdrawn, it is probable that the moneys arising therefrom may not be invested by the county loan commissioners for some time; resulting in loss of interest, besides the danger of not securing so favorable and safe investments as at present.

It does not appear that the Board of Supervisors of the county have asked for the withdrawal of the county war bonds."

Assembly bill No. 731, entitled "An act creating a Board of Commissioners of Emigration, and conferring thereon certain powers and duties."

"A convention of Superintendents of the Poor of the State, held at Goshen, protested against the provisions of the 5th section of this bill, in relation to the support of destitute emigrants."

Assembly bill No. 890, entitled "An act to establish and maintain a police force in and for the county of Richmond."

" Changes manner of appointing Police Board. The Police act of 1870, has been in force only two years, and should be further tested, before its repeal."

Assembly bill No. 949, entitled "An act to establish police courts, courts of special sessions and District courts in the city of Brooklyn."

"Provides for the *appointment* of police justices by a commission, instead of *election* by the people."[a]

Assembly bill, not printed, entitled "An act to authorize the several courts of record of criminal jurisdiction in the county of Kings, to sentence prisoners convicted before them, to the Penitentiary, in the same manner and for the same time as said prisoners may be sent to the State prison; and to provide for the transportation of such prisoners to said Penitentiary."

"Special legislation, which it is not the policy of the State to encourage."

Senate bill No. 77, entitled "An act authorizing the appointment of attendants and messengers of the Supreme Court, in the county of Kings."

"The manner of appointment by the sheriff, is unusual, and there appears to be no good reason for this method of appointment in this special case. Power is already conferred upon judges to make appointment."

Assembly bill No. 675, entitled "An act to provide for the completion of certain highways in the towns of Yonkers and East Chester, in the county of Westchester."

"This bill affects rights vested under prior legislation.

Assembly bill No. 839, entitled "An act relative to the medical laws of the State of New York."

"I have submitted this bill to my much respected and esteemed friend Doctor Thomas Hun, of Albany, in whose judgment, as a man as well as a physician, I have great confidence, and have asked his views with reference to it.

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[a] Const. 1846, art. 6, am. 1869, § 18.

They generally accord so completely with my own, and are so tersely expressed that I file them with the bill as my reason for not giving it my approval.

'Remarks on Assembly Law No. 839, respectfully submitted to the Governor by Thomas Hun, May 30th, 1872.

The object of this bill is to compel every person offering to practice medicine, to procure a license from some one of the three sets of county medical societies, under penalty of fine and imprisonment. It is hoped by its advocates that in this way, legal practitioners would have a medical education, and that all others would be forced to relinquish practice.

I believe the bill is not founded on sound principles of legislation, and that, in practice, it would not accomplish the end proposed by its authors.

Laws restricting the practice of medicine are intended either for the protection of physicians against competition of irregular practitioners, or for the protection of the public against imposition and injury.

Educated physicians ought not to have, nor do they need any protection against competition, except that furnished by their character for learning and skill. They ought to claim no monopoly established in their interest.

The public are entitled to protection against imposition, but not against the consequences of their own mistaken judgment. Every man is supposed to be able to take care of himself, and to have a right to choose what kind of medical attendance he will provide for himself and family. The State is only bound to provide that those offering to practice medicine, shall not hold out false pretences, and this demand is fully secured by the law as it now stands.

Provision is now made for examining and licensing three kinds of Doctors, viz: Doctors who hold to and continue the tradition of the profession, Homeopathic doctors and Eclectic doctors. These are legal practitioners, but have no legal privileges not possessed by all other persons.

The mode of licensing these three classes of practitioners has been so defined by law, that any person wishing to employ a physician can readily find out whether he has been duly accredited as belonging to one of these classes, and which one. For this purpose, he has only to inquire whether he is a member of one of the county medical societies or not. He who wishes to employ a practitioner belonging to any one of these three classes, or one not belonging to any of these classes, is left at liberty to do so on his own responsibility; and as he alone or those under his guardianship are to be benefited or injured by his action, it seems right that the State should interpose no obstacle to his free choice.

In contracts the law furnishes protection against deception, but not against errors of judgment.

The State having guarded the public against imposition by furnishing the manner of ascertaining what kind of qualification the practitioner possesses, leaving each man to choose for himself, has done all that it is called on to do. It is not the business of the State to compel men to choose wisely. It is a fact that a portion of the public, and that not the most unenlightened portion, believe that a Doctor's capacity to cure diseases does not depend very much on the degree of education in medical science he has had, and much as we may regret this error, as we consider it, we have no right to call on the State to assume the guardianship of those persons and compel them to abandon what we consider a wrong notion, especially when we take into account the class of men who have recourse to clairvoyants, and natural bone-setters and hydropathists, and others for whom no provision is made in the proposed law.

So long as the State recognized only one kind of medical practitioners, there was some logic, even if there was not good policy in restricting to them the right to practice, but now that it has admitted two other kinds, homeopathists and eclectics, there seems no reason why all other sects should not have the same recognition. After giving up the idea of orthodoxy in medicine, on what principle is it going to limit the number of sects to three and no more? By the proposed law it allows the public to choose between Doctors proper, and homeopathists and eclectics; but if some one wishes to employ a clairvoyant, or a spiritualist, or a dealer in patent medicines, why should he be hindered in his choice?

But besides being founded on a vicious principle the law would, in practice, fail to carry out the object proposed.

The only argument in favor of this law that can have any force, is that it will require all practitioners to present at least some guaranty of education and moral character. When we take into account that any one of about one hundred and eighty proposed medical societies can confer a license to practice and that the candidate rejected by one can apply to another, till he finds one to accept him, this guaranty becomes weak indeed. But even this guaranty will not exist, for so long as people are willing to employ unlicensed practitioners the law will never be enforced.

In support of this assertion, I appeal to experience, under circumstances more favorable to success than now exist. The experiment has been tried and failed.

Previous to 1830, only one class of medical practitioners was recognized by law, and a law similar to this was in force. By the Revised Statutes 'every person not authorized by law, who for any fee or reward shall practice physic or surgery within this State, shall be incapable of recovering by suit, any debt arising from such practice, and shall be deemed guilty of a misdemeanor, punishable by fine or imprisonment, or both.'

By a law passed April 7th, 1830, the penalty was abolished in the case of persons 'using or applying for the benefit of sick persons any roots, barks or herbs, the produce of the United States,' but the disability from collecting fees was continued.

By a law passed May 6th, 1844, the penalties and disabilities were repealed as to all persons offering to practice 'except in cases of malpractice or gross ignorance or immoral conduct in such practice.'

While the law restricting practice was in force, irregular practitioners defied the law with impunity, and found patients to employ them all the more because they claimed to be persecuted, not because they suffered any inconvenience from the law, but rather to attract public notice and sympathy; the 'root doctors' besieged the Legislature every year till, in 1830, the penalty was abolished so far as related to them. Afterwards they continued to agitate for the removal of the disability to collect fees, and were joined by the homeopathists and others, till, in 1844, all penalties and disabilities were removed from all offering to practice medicine.

This repeal leaving the practice of medicine and surgery free to all was well received by the profession who had experienced the evils of the former law, and has since worked well in practice; any man may now call himself doctor, and offer to practice, people understand that this furnishes no guaranty of skill or honesty and look into the antecedents of candidates for practice; and though a large number continue to employ uneducated men, it is because they prefer such.

So long as people are willing to employ irregular practitioners, so long will candidates for their patronage present themselves. No penal legislation will stop this, nor will this bill, if it becomes a law, remain for many years. Clairvoyants, dealers in patent medicines, bone-setters and others will ask to be relieved from its operation, not so much as a means of relief, for they will never suffer from its penalties, but as a means of advertising themselves as a persecuted class, and in a few years, after doing no good, and some mischief, the law will be repealed. The experiment failed thirty years ago, and will be more sure to fail now, for as the Legislature by this law admits two sets of what were once illegal practitioners, why should it not admit more?

I do not mean to say that it is not desirable that the practice of medicine should be exclusively in the hands of educated, skillful and honest men. I deplore the evils which this bill seeks to remove as much as the authors, but do not agree with them as to the proper remedy. It is an important truth, too little understood, that there are many wrongs which cannot be made right by legislation. I deplore the defects of some religious teachings and practices of which I disapprove, but I would not have the State try to put a stop to them. Penal legislation to protect men against their own folly will never succeed in this country.

I think, therefore, that it will be better for the public and for the medical profession that the law should remain as it is."

Senate bill not printed, entitled "An act to extend the jurisdiction of the Board of Health of the city of Brooklyn, in times of epidemic or pestilence throughout the county of Kings."

"This bill conflicts with section 2 of article 10 of the State Constitution, in conferring upon officers of the city of Brooklyn, jurisdiction to perform official acts in the several towns of Kings County."

Assembly bill, not printed, entitled "An act to amend the charter of the city of Brooklyn."

"The bill provides an unusual method of appointing city assessors by two different commissions composed of city officers. Also for the *appointment* of police justices (instead of *election* by the people) by a commission of city officers, a mode not contemplated in the State Constitution."[aa]

[aa] Const. 1846, art. 6, am. 1869, § 18.

Assembly bill No. 208, entitled "An act to amend section 3 of chapter 533 of Laws of 1867, entitled 'An act for the relief of the Van Brunt street and Erie Basin Railroad Company (Brooklyn)."

"Increases railroad fare on city railroad against what I think was a contract with city, on acceptance of franchise.[*]"

Senate bill No. 529, entitled "An act to provide for the settlement of claims against the city and county of New York, not embraced within the provisions of chapters 9 and 29 of the Laws of 1872, and to facilitate the settlement and payment of claims under said chapters."

"See letters of Attorney General and corporation counsel of New York city, adverse to the bill on file in executive chamber."

Senate bill No. 345, entitled "An act to repeal chapter 261 of the Laws of 1850, entitled 'An act to provide for the better education of the children of the several Orphan Asylums in this State other than in the city of New York," passed April 10th, 1850.

"These asylums have for many years received a share in the distribution of certain school money, which this act proposes to deprive them of, and for which I think sufficient reasons are not shown."

Senate bill No. 437, entitled "An act to establish a Board of Health in and for the city of Brooklyn and county of Kings."

"This bill provides for the appointment of a Board of Health, to consist of four members. Two members of this board are to be appointed by certain city officers; the president of the Police Board (appointed by another commission), to constitute a third member of the Board, and the mayor of the city (the only elective member), to constitute the fourth member of the Board.

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[*] U. S. Const. art. 1, § 10, obligation of contracts.

With an appointing power liable to constant change, the efficiency and stability of a Health Commission thus constituted, may be seriously questioned.

The third and ninth sections of the bill apply certain provisions of the Metropolitan Sanitary Act of 1866, which was repealed as to the city of Brooklyn, by chapter 381, Laws of 1870. The act of 1870 also revived the provisions of the city charter, in relation to the Health Board of the city, in existence prior to 1866.

The reasons adduced for a new Health bill, are not in my opinion sufficient to warrant my approval of this bill."

Senate bill No. 410, entitled "An act in relation to expenses in opening streets and for local improvements, in the city of New York."

"This bill does not tend to promote economy in expenditures, or equity in awards and assessments in cases of street openings and local improvements.

It also violates a well established principle, in transferring nearly the entire necessary costs included in opening streets, avenues, etc., from the property actually benefited, to general taxation.

For further objections in detail, see letter from corporation counsel, dated June 3d, 1872, on file."

NEW YORK CHARTER.

A New York charter bill was passed at this session, but was vetoed. See special message of April 30, (*ante,* p. 453.) A revised charter was enacted the next year 1873, chapter 335. There was another revision of the charter in 1882, chapter 410, called the New York Consolidation Act.

On the creation of Greater New York, see L. 1890, chap.

311, providing for a commission to examine the question of enlarging the city by including adjacent municipalities; L. 1894, chap. 64, submitting the question of consolidation to the people; and L. 1896, chapter 488, charter commission; a new charter for the greater city, L. 1897, chap. 378, was enacted which was revised and amended by L. 1901, chap. 466.

New York charter provisions were sustained as follows: 1873, chap. 335, Demarest v. Wickham (1875), 67 Barb. 312, aff'd (1875), 63 N. Y. 320; People ex rel. Taylor v. Dunlap (1876), 66 N. Y. 162; People ex rel. Cox v. Special Sessions' Justices (1876), 7 Hun 214; Billings v. New York (1877), 68 N. Y. 413; Polinsky v. People (1878), 73 N. Y. 65; Demarest v. New York (1878), 74 N. Y. 161; Hill v. Thompson (1882), 16 Jones & S. 481.

1873, chap. 757, amending 1873, chap. 335, sec. 4, People ex rel. Demarest v. Farley (1884), 1 How. Pr. N. S. 71.

1873, chap. 757, sec. 20, 1873, chap. 779, sec. 1, amending 1873, chap. 335, sec. 112, Townsend v. New York (1879), 77 N. Y. 542.

1882, chap. 410, Re United States (1884), 96 N. Y. 227; Jorgensen v. Squires (1895), 144 N. Y. 280; Fire Department v. Stanton (1899), 159 N. Y. 225; *quære,* Sbarboro v. Health Department (1898), 26 App. Div. 177; Re New York (1892), 135 N. Y. 253; Getman v. New York (1892), 66 Hun 236; Ricketts v. New York (1884), 12 Daly 504; Re Thirty-second Election District (1888), 18 N. Y. S. R. 785; People v. O'Neil (1888), 109 N. Y. 251.

1887, chap. 84, amending 1882, chap. 410, sec. 663, Health Department v. Trinity Church (1895), 145 N. Y. 32.

1893, chap. 104, amending 1882, chap. 410, sec. 1109, People ex rel. Follett v. Fitch (1895), 145 N. Y. 261.

1897, chap. 378, Re Schultes (1898), 33 App. Div. 524; Irwin v. Metropolitan Street R. Co. (1899), 38 App. Div. 253; Kantro v. Armstrong (1899), 44 App. Div. 506;

Worthington v. London Guarantee & Accident Co., 164 N. Y. 81; Routenberg v. Schweitzer (1900), 165 N. Y. 175; People v. Levy (1898), 24 Misc. 469; Connolly v. Van Wyck (1901), 35 Misc. 746; Re Leich (1900), 31 Misc. 671, as am'd 1900, chap. 155, Duffghe v. Met. St. Ry. Co. (1905), 109 App. Div. 603.

1901, chap. 466, Sugden v. Partridge (1903), 174 N. Y. 87; People ex rel. Abrams v. Fox (1902), 77 App. Div. 245; People ex rel. Richmond Hook & Ladder Co. No. 4 v. Grout (1903), 79 App. Div. 61; People ex rel. Simpson v. Wells (1905), 181 N. Y. 252; People v. Davis (1903), 78 App. Div. 570; Kane v. McClellan (1905), 110 App. Div. 44.

The following New York charter provisions have been held unconstitutional:

1873, chap. 335, sec. 112, New York v. Broadway & S. Ave. R. Co. (1878), 12 Hun 571.

1878, chap. 400, amending 1873, chap. 335, sec. 4, *quære,* People ex rel. Angerstein v. Kenney (1884), 96 N. Y. 294.

1882, chap. 410, sec. 677, Forster v. Scott (1893), 136 N. Y. 577; sec. 1103, Mussen v. Ausable Granite Works (1892), 63 Hun 367; Getman v. New York (1892), 66 Hun 236; sec. 2143, Jaehne v. New York (1888), 128 U. S. 189, affirming (1888), 35 Fed. 357; People v. O'Neil (1888), 109 N. Y. 251.

1897, chap. 378, Rieser v. Charles F. Parker & Co. (1899), 27 Misc. 205; Pierson v. Ward (1899), 27 Misc. 793; Tyroler v. Gummersbach (1899), 28 Misc. 151; McConologue v. McCaffrey (1899), 29 Misc. 139; secs. 707–711, Re Kenny (1898), 23 Misc. 9, affirmed in (1898), 30 App. Div. 624; secs. 1392, 1394, Kelly v. Van Wyck (1901), 35 Misc. 210.

1900, chap. 663, amending 1897, chap. 378, sec. 1212, New York Sanitary Utilization Co. v. Health Department (1901), 61 App. Div. 106.

1901, chap. 466, sec. 94, People v. Fitzgerald (1905), 180 N. Y. 269; sec. 1392, People v. Dooley (1902), 171 N. Y. 74; sec. 1560, People ex rel. Price v. Woodbury (1902), 38 Misc. 189.

1873. JANUARY 7. LEGISLATURE, NINETY-SIXTH SESSION.

JOHN A. DIX, Governor.

ANNUAL MESSAGE.

Executive Chamber,
Albany, *January* 7, 1873.

To the Senate and Assembly:

Fellow Citizens.—You are assembled under circumstances which demand the acknowledgment of our heartfelt thankfulness to the Sovereign Ruler of the Universe. The year which has just closed is marked by the usual abundance of our harvests, the general prosperity of our people, our exemption from the calamities of fire and flood, by which other communities have been desolated, and the absence of all minor evils, excepting such as are the fruit of our own errors and improvidence.

We have special cause for congratulation in the prevailing calm which has succeeded the late contested election of the Chief Magistrate of the Union,* furnishing, as it does, renewed evidence of the ready acquiescence of the people of the United States in whatever the majority through the settled forms of the Constitution deliberately decide. When we consider that five-sixths of all the States have cast their votes for the same candidate for their suffrages, may we not regard it as an indication that the animosities incident to the late deplorable conflict between the two great sections of our country are gradually wearing away, and that a liberal and enlightened policy on the part of Congress and the eminent citizen, on whom the public confidence has been thus signally bestowed, will lead to an eventual and not far distant oblivion of past differences? No achievement can be more intimately interwoven with our common

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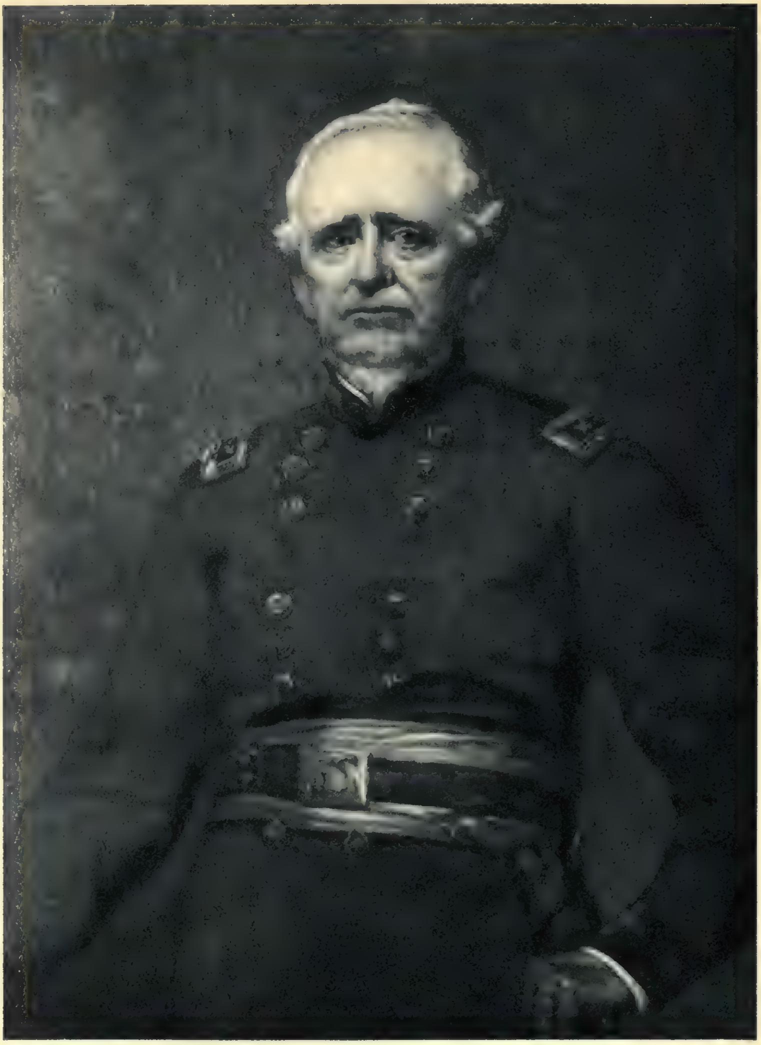
* Ulysses S. Grant was re-elected President in 1872.



John A. Dix.

prosperity, or more worthy of the co-operation of all good citizens, than the obliteration of those sectional distinctions which have proved so fruitful a source of discord and strife.

The administration of the federal government during the last four years has, under many important aspects, been eminently successful. More than three hundred and sixty millions of the public debt have been paid; the heavy burdens patriotically assumed by the people, to prevent a dismemberment of the Union by intestine war, have been essentially lightened through the abolition of taxes; questions of an irritating character between us and Great Britain have been amicably and satisfactorily settled; our obligations of good faith toward other nations have been scrupulously fulfilled, and the peace of the country has been inflexibly maintained in the presence of events which appealed with great force to our sympathies as a free people.

Withdrawing the attention from the broader field of our federal relations, and bringing it within the circle of our own immediate concerns, may I not appeal to you in the spirit of conciliation which presages for the former a tranquil future, to forget that party associations have ever divided us, and invoke your earnest and patriotic concurrence in the correction of abuses, the consideration of which entered so largely into the recent State election, and in regard to which the popular will has been so decisively expressed?

The first message of a Governor of the State must necessarily from the short period intervening between his election and the meeting of the Legislature, be confined to the presentation of his own views upon subjects familiar to the great body of his fellow citizens. He can only know the condition of the different departments of the State government through the reports of the officers having them in charge. These reports will be submitted to you, and I proceed to give a synopsis of them in anticipation of the more detailed information which they contain.

RECEIPTS AND EXPENDITURES.

The receipts and payments from the treasury on account of all the funds, except the canal and free school funds, for the fiscal year ending 30th September, 1872, were as follows:

Receipts	$14,807,252.34
Payments	14,455,552.73
Balance in the treasury	$351,699.61

During the last few years the sums voted by the Legislature for various objects were greatly in excess of the current revenues. By this improvident legislation deficiencies to the amount of more than six millions of dollars accrued and were left to be provided for by succeeding legislatures. I believe it to be a just and salutary rule that no appropriation of money should be made without providing, simultaneously, the means of payment. No better safeguard could be found against extravagant and inconsiderate legislation; for it is hardly to be supposed that a legislative body would have the recklessness to run the State in debt by wasteful expenditure, and incur the additional odium of laying taxes upon the people to defray them. An unsuccessful attempt was made to throw the burden of these deficits upon posterity by adding them to the permanent State debt, but it failed through a constitutional obstacle, and the amount was added, by the comptroller, to the tax levy for the current year.

I earnestly appeal to you to correct these errors on the part of your predecessors by abstaining from all expenditures which are not indispensable to an economical administration of the government. The people of the State are already weighed down by enormous burdens of taxation. I believe it to be in your power to lighten these burdens by a prudent husbandry of our financial resources, by providing for a more strict supervision and management of public establishments, which now make heavy drafts upon the treasury, and by restricting appropriations of money to State objects.

For the purpose of carrying these views into effect, I recommend the passage of a general law, authorizing and requiring the comptroller, whenever in any year an appropriation by the Legislature shall exceed the amount of the revenue applicable to it, to provide for such deficiency by adding it to the tax levy. The people, on whom the burden falls, will be the more likely to scrutinize the appropriations by which it was created, and be enabled to decide whether they were required to meet the actual wants of the government, or whether they were the fruit of improvident legislation. In this manner they may hold their representatives to a strict accountability.

During the years 1869, 1870, and 1871, more than $2,000,000 were bestowed upon private charities, for the most part of a local and sectarian character. I consider these appropriations inconsistent with our obligations to the great body of the taxpayers, on whom the burden ultimately falls. The institutions for the support of which they are made are, for the most part, purely local. They belong to localities in which there are large accumulations of wealth, and where private contributions may be readily procured to sustain such as are deserving of support. They are almost invariably under the exclusive control of particular religious societies, with some of which a feeling of jealousy and a sense of injustice are naturally excited by any unequal distribution of the public bounty among them. Moreover, it appears to me to be a violation of every principle of equal justice to tax the people of St. Lawrence and Allegany, or any other remote interior county or district, for the support of private or sectarian charities in New York or other wealthy and populous cities. The last legislature refused to make appropriations of the public money for these objects, and I hope you may consider their example worthy of imitation.

STATE DEBT.

The following statement shows the amount of the State debt on the 30th of September, 1872, after deducting the unapplied balances of the sinking funds at that date:

	Debt on the 30th September, 1872.	Balance of sinking funds on the 30th September, 1872.	Balance of debt after applying sinking funds.
General fund	$3,988,526 40	$2,787,567 49	$1,200,958 91
Contingent	68,000 00	19,710 50	48,289 50
Canal	11,396,680 00	1,449,978 15	9,946,701 85
Bounty	21,121,000 00	6,930,224 42	14,190,775 58
	$36,574,206 40	$11,187,480 56	$25,386,725 84

The sinking fund of the general fund includes $1,202,571.35, received since the close of the fiscal year, and from the sinking fund of the bounty fund the interest accrued to October 1, 1872, payable January 1, 1873, has been deducted.

Thus, the entire funded debt of the State, on the 30th of September, 1872, after deducting unapplied balances of the sinking funds, amounted to $25,386,725.84. On the 30th of September, 1871, the entire funded debt of the State, after a like deduction, was $29,482,702.52. There was, therefore, during the last financial year, a reduction in the amount of the funded debt of $4,095,976.68.

REDEMPTION OF THE STATE DEBT.

On the first day of this month $847,500 of the canal debt became due, and the principal and interest were paid in coin. In July and November $4,303,600 more will fall due, and will be redeemed in specie by the commissioners of the canal fund. I trust the good faith of the State, in its fiscal transactions, will be scrupulously maintained, and that the public creditors will not be asked to receive depreciated paper in payment of the debts due to them. At a former period, during a suspension of specie payments, the State officers charged with the management of its revenues paid in coin the interest on the debt then outstanding, and thus preserved the public credit inviolate. If it be justifiable, in seasons of public danger, to make anything but specie a legal tender in contracts between individuals, thus departing from the only standard of value recognized by civilized States, and the only one to which transactions between independent communities can be made to conform, the policy and morality of continuing the practice in time of peace are both questionable. Indeed, no difference in principle is perceived between a compulsory acceptance of a depreciated paper currency and an adulteration of the national coin. Whatever dilatoriness there may be on the part of Congress to repeal the law thus affecting private obligations by bringing them to an arbitrary and degraded standard of value, our own duty towards our creditors is quite apparent. The propriety of some early action might be equally clear to the federal government if its paper were publicly quoted at 88 per cent—its present value instead of quoting gold at 112, according to the established practice, in order to cover up a national reproach.

TAXES.

The State tax levy for the current year amounted to 9 3-8 mills, of which 5½ mills were for bounty debt and canal and general fund deficiencies. The total amount of tax collected under this levy will be $19,580,882.30.

SALT SPRINGS.

The quantity of salt from the Onondaga salt springs, inspected during the last fiscal year, was 7,999,799 bushels—less by 579,394 bushels, than the production of the preceding year. The net revenue from this source was $34,622.12, exceeding that of the preceding year by the sum of $7,965.33.

COMMON SCHOOLS.

The Superintendent of Public Instruction has furnished the following statistics for the year ending September 30, 1872:

Total receipts, including balance on hand, September 30, 1871	$11,462,900.26
Total expenditures	10,322,690.92
Amount paid for teachers' wages	6,953,318.53
Amount paid for school houses, repairs, furniture	1,988,460.34
Estimated value of school houses and sites	28,632,967.00

Total number of school houses	11,740
Number of school districts (exclusive of cities)	11,369
Number of teachers employed at the same time for the full legal term of school	18,031
Number of teachers employed during any portion of the year	28,495
Number of children attending public schools	1,010,242
Number of persons attending normal schools	5,657
Number of children of school age in private schools	131,519
Number of volumes in school district libraries	875,175
Number of persons in the State between five and twenty-one years of age	1,520,628

CHARITIES AND ASYLUMS.

The annual report of the commissioners of charities will present to you information and suggestions worthy of your deliberate consideration. I renew the recommendation of my predecessor, that an inquiry be made into the condition of pauper children in the several counties, with a view to some provision by which they may be saved from contamination by association with old and incorrigible offenders.[1]

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[1] By chapter 661, approved June 7, pauper children under ten years of age, committed to the state almshouse, might be transferred to an orphan asylum, where they were to be maintained at the expense of the State.

BANKS.

On the 1st of October last seventy banks were doing business under the banking laws of this State. During the fiscal year circulating notes to the amount of $26,093 have been destroyed by the Bank Department. Forty-one banks have been credited with lost circulation to the amount, in all, of $213,341, the time for redeeming the same, after the usual legal notice, having expired.

The amount of circulation outstanding, including that of incorporated banks, banking associations and individual bankers, was, on the 1st of October last, $1,902,001.50. Of this amount the sum of $1,148,539 was secured by deposits of cash, stocks, or stocks and mortgages. The residue, being circulation issued prior to the passage of the general banking law, is not secured by any deposit in the Bank Department.

SAVINGS BANKS.

There were, on the 1st of July last, one hundred and fifty-one savings banks reporting to the Banking Department (two of which are closing), with assets to the amount, in the aggregate, of $292,305,325. These assets may, at this time, be estimated, upon the ratio of increase of the preceding six months, at $301,572,804. The number of persons having deposits in these institutions, was, according to the number of open accounts on the 1st of January, 1872, 776,700.

It is very desirable that the provisions of law regulating savings banks should be uniform; and, in my opinion, the object in view in the creation of these institutions — the security of deposits by individuals whose small savings are for the most part all they possess — would be best secured by a general law defining their powers, and by the repeal of all special privileges in existing charters inconsistent with it. As they are created for the benefit of persons in moderate circumstances, and not for persons dealing in large sums, the amount which any one individual should be allowed to deposit should be limited. I suggest further for the consideration of the Legislature whether the classes of securities in which these institutions invest should not be prescribed by law, and any investment by trustees in violation of it made a misdemeanor.[2]

INSURANCE DEPARTMENT.

The number of insurance companies subject to the supervision of the Insurance Department on the first day of December, 1872, was 264, as follows:

New York Joint Stock Fire Insurance Companies	93
New York Mutual Fire Insurance Companies	7
New York Marine Insurance Companies	9
New York Life Insurance Companies	32
Fire Insurance Companies of other States	78
Marine Insurance Companies of other States	1
Life Insurance Companies of other States	28
Casualty Insurance Companies of other States	3
Foreign Insurance Companies	13
Total	264

The total amount of stocks and mortgages held by the Department for the protection of policyholders of Life and Casualty Insurance Companies of this State, and of Foreign Insurance Companies doing business within it, is $9,107,493.54, as follows:

For protection of policyholders generally, in Life Insurance Companies of this State	$3,961,143.54
For protection of registered policyholders exclusively	2,815,350.00

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[2] Securities in which savings banks were authorized to invest their funds were prescribed and limited by the general savings bank law of 1875, chapter 371. The scope of investments has since been enlarged by numerous statutes.

The same act limited an individual deposit to $5000, unless made by order of a court of record or a surrogate. By L. 1878, chap. 347, the limitation was reduced to $3000, and this limitation has been continued by subsequent statutes.

For protection of casualty policyholders exclusively	$1,000.00
For protection of fire policyholders in Foreign Insurance Companies	2,027,000.00
For protection of life policyholders in Foreign Insurance Companies	303,000.00
Total deposit	$9,107,493.54

MILITIA.

The uniformed militia of the State, known as the National Guard of New York, consists of eight divisions and twenty-five brigades, distributed among the different arms as follows, viz: One regiment, one battalion and nine separate troops of cavalry, twelve batteries of artillery, thirty-seven regiments and six battalions of infantry; making an aggregate of twenty-three thousand six hundred and seventy-two officers, non-commissioned officers, musicians and privates.

I need not say how important it is to give to the different corps the greatest possible efficiency in organization and the most effective armament. Without much opportunity for observation, I nevertheless have the impression that little remains to be done by law to accomplish both objects. It is my purpose to give special attention, through my military staff, to the inspection of the troops, arsenals and armories, and to the drill by brigades, when it is practicable, so that regiments may be prepared to act in larger bodies in case of sudden emergency. I have the pleasure of communicating for your information the following extract from the annual report of the late faithful and zealous Adjutant General:* "The excellence of the National Guard in drill, discipline and general efficiency has continued, and it may safely be said that never before in its history has it stood higher in reputation or enjoyed in a greater degree the good will of the people."

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* **Franklin Townsend.**

QUARANTINE.

During the past year one hundred and fifty-two (152) vessels were detained in quarantine for sickness which had occurred on them while in port or on their passage to New York.

One hundred and fifteen (115) vessels had six hundred and eighty (680) cases of small-pox, of which two hundred and seventy-four (274) were fatal, nearly all the deaths occurring before the vessels reached port. This extraordinary number of deaths is due to the use of the old sailing packets from Germany, where the emigration, after the close of the war, was greater than the capacity of the steamships.

On board of these one hundred and fifteen vessels, there were exposed to the disease, in a greater or less degree, seventy-three thousand three hundred and six (73,306) persons, passengers and crew.

Thirty-four (34) vessels had yellow fever on them; on these there were one hundred and sixty-nine (169) cases and forty-seven (47) deaths, there being nine hundred and five (905) persons exposed.

Twenty-four (24) of these vessels had yellow fever on board at the time of their arrival, and forty-five (45) cases were sent from them to the West Bank Hospital, and nine (9) of them proved fatal.

Four (4) vessels brought six (6) cases of ship fever, to which two thousand six hundred and ten (2,610) persons were exposed.

Twelve (12) vessels arrived from ports known to be infected with cholera, but no cases of cholera occurred.

During the quarantine season, from the first of April to the first of November, one hundred and thirty (130) vessels from ports infected with yellow fever were detained for observation. Of these, seventy-one (71) were required to lighten the whole, or part, of their cargoes, before going to the city. Sixty-four (64) of them were from the port of Havana, and the remaining seven (7) from the ports of Pernambuco, Manzanilla and Maracaibo. The experiment of leaving the work on these vessels entirely in the hands of the owners, subject only to such sanitary restrictions as were necessary to the public safety, was tried by the health officer with signal success. Any responsible person is permitted to work upon the ships who has authority from the owners of vessels or cargoes, and executes a bond to the health officer for the strict observance of the rules for sanitary restraint and detention.

HOFFMAN ISLAND.

During the year an earnest effort has been made to complete the buildings on the upper quarantine structure, known as Hoffman Island. The three buildings will be ready for use by the opening of spring. In anticipation of their being in readiness, the steamship Albany, which was loaned to quarantine by the United States authorities, has been returned.

The steamboat Andrew Fletcher, belonging to the quarantine department, was burned during the month of December while lying at the dock, and when no fire or steam had been raised for the last eight hours. The accident was caused by defective felting over the boiler. In view of the necessity which exists for a boat, for the general operations of quarantine, and the superintendence of the work now in process of construction on Hoffman Island, the boat should at once be rebuilt.[3]

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[3] Chapter 18, passed February 18, 1873, appropriated $30,000 for the purchase of a steamboat to be used for quarantine purposes in place of the Andrew Fletcher recently destroyed by fire.

The health officer, in connection with the commissioners of quarantine, acting under authority of the law passed at the last session of the Legislature, has selected and contracted for a site to be used as a boarding station for vessels arriving from non-infected ports.

I recommend the discontinuance of the commissioners of quarantine as a salaried board, continuing them as a court of appeal from the decisions of the health officer, with a *per diem* allowance when actually employed. The main object for which the board was created has been substantially accomplished, and by the arrangement proposed a considerable sum will be saved.[4]

Under the present faithful and efficient health officer complaints against the administration of the office have ceased. To be prepared for the possible maladministration of the office by an incumbent of a different character, I think the power of removal, formerly possessed by the Governor, should be restored to him.

EMIGRATION.

The number of alien emigrants landed at the port of New York during the year 1871 was 229,639, and the number landed during the year 1872, 293,603, making an excess during the latter year of 63,964.

The institutions of the commission consist of the emigrant landing depot at Castle Garden, and hospitals, refuges and other buildings sufficient for 2,500 sick and destitute emigrants, with 120 acres of land on Ward's Island. All alien passengers on their arrival at New York, for whom commutation is paid, are entitled to the protection of the commission, for a period of five years from the date of their arrival. The board after an experience of nearly two years find the commutation fee of $1.50, to which sum it was reduced from $2.50 by the legislature in 1871, inadequate to the legitimate and necessary expenses of the department, although carried on, as the commissioners state, as economically as it was by their predecessors in office; and they ask that the attention of the legislature may be called to the subject. Their annual report will be submitted before the 1st of February, containing all information in regard to their receipts and disbursements.

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[4] By chapter 643, passed May 29, the board of quarantine commissioners was abolished, and its duties were transferred to and devolved upon the health officer.

CANALS.

The revenues of the canals from all sources for the fiscal year ending the 30th September, 1872, amount to	$3,078,247.96
And the payments for ordinary repairs and cost of collection	1,875,676.61
Leaving a surplus of	$1,202,571.35

The surplus would have been larger by the sum of $577,181.38 but for a deficiency to that amount in the revenues of the lateral canals to meet the expenditures upon them. It is hardly fair to them to consider the real deficiency quite so large, for they have, no doubt, brought to the Erie canal products which would not otherwise have reached it, and the tolls collected on the transportation of these products on the latter should be considered as reducing the apparent deficiency to that amount. Nevertheless the lateral canals fail to yield sufficient revenue to meet the sums expended for keeping them in operation, and have always drawn largely on the State treasury to supply these deficiencies.

The payments of $1,875,676.71 above stated do not include extraordinary repairs. In the Comptroller's report there will be found a full statement of expenditures for the canals, including ordinary and extraordinary repairs and new work, for the year ending 30th September, 1872; and it will be seen that the total disbursements on all of them, in excess of all income, amount to $314,373.07 — a deficiency to be met by loans or taxation.

For nearly half a century the Erie canal has been one of the chief commercial conduits between the city of New York and the Western States and Territories, and until the introduction of railroads was the sole channel of communication between them. It has added incalculably to the wealth of the State and to the convenience of its inhabitants, and has been justly regarded as one of the great enterprises of the age. The western boundary of civilization at the time of its completion was, with inconsiderable exceptions, on this side of the Mississippi river. It is now on the shores of the Pacific; and an immense population covers the surface which was then only marked by rude and widely scattered settlements. Although railroads have superseded canals in the transportation of passengers and lighter products of industry, the latter are still relied on for moving bulky articles, and are likely with the progress of improvement, to yield as large a revenue as they earned before the business of carrying was shared with the former. While, therefore, the competition of the great railroad lines which are now penetrating the west, for the purpose of carrying on its commercial communications with the seaboard, may reduce the rates of transportation to the lowest standard of profit, there is always a possibility that they may, by combinations, advance these rates beyond what would be a fair compensation. Partial agreements of this kind have more than once been made, but they have usually been of short duration through a breach of faith by some of the parties for the purpose of overreaching and gaining an advantage over the others. In this point of view it becomes of importance for the State to retain the control of the canals and to hold them as a security to its inhabitants against the possible consolidation of other lines of communication, and as affording an ultimate measure of the rates of transportation, which, without such a control, might be indefinitely and oppressively increased. It is scarcely to be doubted, if the State were to part with the Erie canal, that it would soon pass into the hands of some great railroad corporation, and the people would have no check on the imposition of exorbitant charges for freight. While, therefore, we appreciate the immense importance of the railroad system in ministering to our comfort and prosperity, in stimulating our growth and adding to our wealth, and while our legislation in regard to it should be liberal and just, it would, in my judgment, be extremely unwise to disarm ourselves of the power to protect the people of the State against contrivances, to which great corporations are but too prone to resort for increasing their profits, forgetting that the principal object of their creation is to promote the welfare of the community at large, and not the interest of their shareholders.

In order to render the power of restraint more effectual, it is desirable that the time required for the transportation of heavy freight from Buffalo to New York, by the Erie canal, should be so reduced that it may not in any great degree, differ from that needed for the transportation of like freight by rail. But the question of more rapid transit involves other and higher considerations. If the time taken for the transportation of a cargo from Buffalo to New York can be shortened from fourteen days to five, there will be a saving of nearly two-thirds in certain items of the cost. Such a diminution of time can only be effected by the substitution of steam for animals, as a motive power, and in giving the canal the enlarged dimensions fixed by law in 1835, and afterward recognized by the constitution, that is, seventy feet in width and seven feet in depth. Though it was declared, in 1862, to be completed in accordance with the legal and constitutional requirements referred to, it is well known that, by the accumulation of earth in the bottom of the canal, it does not possess, through its entire extent, the required depth. These obstructions should be removed as speedily as possible, in order to admit the freer passage of boats and to facilitate the success of the experiments recently made, under the act of the legislature of April 28, 1871, with a view to the introduction of steam as a motive power. With a canal of the prescribed dimensions, we cannot doubt the ultimate success of those experiments, without an impeachment of the ingenuity and skill of our inventors and engineers altogether unwarranted by the improvements they have effected in the past. To accomplish the greatest attainable rapidity of transit from the upper lakes to tide water, and to create the least possible disturbance of the water of the canal, a change will be necessary in the form of the boats employed in this service by making them sharper, and this will diminish their capacity and increase the cost of transportation. To obviate this last objection, it has been suggested that it is possible to lengthen the locks by the introduction of gates of a different construction, thus enabling the boats to receive the form necessary for rapid transit without any diminution of their carrying power. I am not prepared to say whether this improvement is feasible, but you may, in view of its importance, deem it advisable to require the State engineer to report whether, in his opinion, it is practicable, and, if so, at what cost and within what time.

Our neighbors in Canada are making arrangements to enlarge the Welland and St. Lawrence canals, so as to admit of the passage of steam propellers of 800 to 1,000 tons, from the upper lakes to the Gulf of St. Lawrence without transshipment. It is not the sole object of this improvement to turn into a new channel the trade of the west, seeking an outlet to the ocean; but it contemplates also a freer intercourse between their own people upon the great lakes and the city of New York as the most convenient, and, during a portion of the year, the only seaport where their products can meet foreign merchandise for the purpose of exchange.

With this view a project is on foot to construct a ship canal from the St. Lawrence into Lake Champlain, so that vessels of the same class may reach Whitehall without unloading. The further hope is no doubt entertained that the Champlain canal may at some future day be enlarged so as to constitute a continuous line of transportation by steam propellers from Duluth, at the western extremity of Lake Superior, to the city of New York. We need not fear that any new facilities which may be afforded to transportation to and from the west will dispense with or seriously impair any existing line of communication. The rapid growth of the western States, and the constantly increased demand for additional supplies of agricultural products on the one hand and manufactures on the other, will tax to their utmost capacity all the channels which can be opened for this extending traffic.

All these considerations address themselves to us with great force in favor of giving to the Erie canal, the direct channel of communication from the great lakes to tide water, its prescribed dimensions, and to the transport of the products of the west the greatest attainable celerity.

The suggestions I have made in regard to the preservation of the Erie canal apply to the Oswego and Champlain canals, which are indispensable parts of our system of internal navigation.[5]

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[5] Chapter 480, passed May 9, continued in office for one year after November 1, 1873, the commissioners appointed by chapter 868, L. 1871, to investigate the subject of transportation on the canals by steam, caloric or electricity, or any other motor than animal power, and report thereon to the Legislature.

Chapter 766, approved June 14, imposed a tax of one half of a mill for the purpose of raising funds to be used in extraordinary repairs on the canals, and the construction of new work, including the deepening of the canal at specified places.

FUNDING THE STATE DEBT.

In direct connection with the foregoing suggestions is the question which has largely occupied, during the last two years, the attention of the public and of the classes concerned in commercial exchanges, of funding the canal and general fund debts, and providing for an issue of five per cent stock, redeemable at the end of forty years, with a provision for the payment of the annual interest, and the creation of a sinking fund out of the surplus revenues of the canals for the redemption of the stock at its maturity. The proposition seems to have met with general acceptance, and I respectfully ask for it your favorable consideration with a view to present it to the people for their decision under the form of an amendment of the Constitution. If it is adopted, the general fund debt, created for the benefit of the people at large, will be paid by the canal revenues, and in this point of view it will commend itself to the approval of the portions of the State which have no direct communication with the canals, and only an indirect interest in maintaining them.

There is one consideration connected with the creation of the sinking fund, in case this issue of stock is submitted to the people and favorably considered, which I desire to press with more than ordinary earnestness on your attention. Sinking funds are, in their nature, a solemn pledge of faith to creditors for the payment of the debts due to

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Chapter 785, approved June 18, authorized the canal commissioners to contract for the use of a newly invented steam dredging machine on the Erie canal for a term not exceeding three years.

Several canal amendments recommended by the Constitutional Commission of 1872 were adopted by the Legislature at this session, and again in 1874, in which year they were submitted to the people and approved. These included Art. 7, sec. 3, (regulating the application of canal revenues, and prohibiting extra compensation to contractors); sec. 6, (permitting the sale of certain lateral canals, and limiting the expenditures on the remaining canals); sec. 13 (the investment and use of State sinking funds); and sec.14, (limitation of claims against the State).

them. To borrow money on their credit for other purposes, or in other words, to make them the subject of any other pledge, or to make even a temporary use of the moneys or securities of which they consist, is a clear violation of the pledge originally given. It appears to me that this deduction of common sense, cannot be invalidated or obscured by any refinement of reasoning, however subtle it may be. There have been instances in which sinking funds have been invaded and consumed; but these cases have been very properly regarded as unwarrantable acts of bad faith. To guard against the temptation of resorting to these funds in emergencies instead of meeting the public wants by taxation, the annual contribution of money provided for their increase should, instead of being deposited in banks, be invested in permanent securities, such as stocks of the United States. The best of all investments is the purchase of the certificates of stock which they are set apart to redeem; and these certificates should be canceled as soon as they are purchased. Thus, the State, instead of having on hand for a series of years a large fund, exposed to the hazard of bank failures and to inconsiderate or unscrupulous legislation, will gradually extinguish its debts and have no money to provide for the purpose when they fall due. If at times it be necessary to purchase these certificates at a premium, the small advance is repaid by having the sinking fund free from the risk of bad management, and the people protected against the necessity of providing by taxation or by a new loan for the loss and the payment of the debts at their maturity.[6]

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[6] The Legislature adopted a resolution proposing a constitutional amendment adding a section authorizing the canal commissioners to borrow a sum sufficient to discharge the canal and general fund debts on a loan to run not more than forty years, which was to be provided for by a sinking fund, to be derived from canal tolls, and pledged for the payment of the bonds or certificates of stock issued on the loan, which bonds and certificates might from time to time be purchased with the proceeds of the sinking fund and canceled.

THE CITY OF NEW YORK.

The organized system of financial depredation which was discovered in 1871, and of which some of the principal municipal officers were the authors and chief participants, has not only cast upon the taxpayers an enormous burden, but has brought upon the character of the city a stigma only to be effectually removed by the punishment of such of the guilty parties as have not eluded the pursuit of justice, and by the recovery, if practicable, of the moneys fraudulently appropriated by them. It may be safely said that there never has been in the history of popular government, and under the color of law, so bold and profligate a misuse of public treasure. Its most lamentable influence is in its tendency to impair confidence in the institutions under which it was perpetrated, by imputing to them a responsibility which belongs, in great part, to the faithless agents by whom they were administered. The authors of this financial pillage, as well as the equally unprincipled judicial functionaries by whom they were abetted and upheld, have been ignominiously expelled from the trusts they have betrayed; and it will devolve on you to provide, by proper amendments to the charter of the city, such safeguards as may be necessary to prevent the recurrence of abuses so oppressive to its inhabitants, and so injurious to its good name.

In the progress of this scheme of depredation, and as one of its natural appendages, useless offices have been maintained and enormous salaries annexed to them, either as rewards to the partizans of its authors, or with a view to divert attention from the frauds they were perpetrating by the exhibition of kindred extravagancies in the chief departments of the municipal government, and to silence, by exorbitant stipends, those who, from close connection with them, could scarcely fail to be cognizant of their guilt. Nor is this all. There were recently in some of the departments paid employés performing no services whatever. Some of the largest salaries are bestowed upon officers of inferior grades holding places which require, by comparison with higher official stations, but a moderate capacity. Thus the police justices, who are, for the most part, persons of inconsiderable judicial knowledge and intellectual ability, have received, and still claim salaries of $10,000 per annum, when half of that sum would be an ample compensation for the services they render.

The organization of most of the departments is according to the same scale of extravagance. There are four commissioners of police, each with a salary of $15,000, five commissioners of public charities, five commissioners of the fire department, and five commissioners of public docks, with salaries of $10,000 each. I believe that in most, if not all of these cases, the organizations would be far more effective, if there were in each department one commissioner, as a responsible head, to perform most of the labor, with the highest salary now paid, and the others with one-fourth of his compensation, as an advisory board. Indeed, no departments have been more economically or efficiently administered than those, which have been confided to commissioners without compensation. There are men of character, wealth and leisure, in New York, who are always ready to accept official positions, which are merely honorary, and in which the interests of the city are deeply concerned. Their own interests, and their pride in its good name, have always been sufficient motives with them to yield it an active and faithful service. When the city has such a resource, it is not only a needless expense, but a prodigal waste of its means to crowd the departments with superfluous officials, and bestow upon them exorbitant gratuities.

The sheriff, register of deeds, county clerk and coroners, are paid by fees, and their compensation amounts to an enormous sum, altogether disproportioned to their services.

I recommend that the fees of their offices be paid into the city treasury, and that they be compensated by fixed salaries.

Unless provision is made by law for uprooting the existing system of municipal government, I much doubt whether the evils which have grown up with it, and some of which cling to it still, can be effectually eradicated without giving the mayor the power of removing municipal officers and appointing others in their place whenever he may think it necessary for the purpose of carrying out the reform so distinctly demanded by the public voice. In this case, the whole responsibility of seeing that the affairs of the city are honestly and efficiently administered will rest with him, and a failure in either respect will make him justly amenable to public condemnation. The well-known integrity, firmness and experience of the present incumbent of the office of mayor,* give the strongest assurance that the power referred to may be safely entrusted to him, and that it will be exercised solely in the interests of the city. Should this suggestion meet your approval, all the other needed measures of reform may be provided for by a few well considered amendments of the existing charter.

Enlightened statesmanship in the eager pursuit of remedies for political abuse and for the arbitrary control of majorities, has devised a plan for securing the representation of minorities by cumulative voting. In municipal organizations first, and since then in the more extended spheres of popular representation the plan has been adopted with satisfactory results. In Denmark and England, in numerous cities and townships in Pennsylvania, and in the State of Illinois at large it has been successfully carried into practice. In the latter three representatives, or members of the more numerous branch of the Legislature, are elected in each Senatorial District, and each qualified voter may cast three votes for one person or distribute them, as he may think fit. At the late election the object in view, proportional representation, was secured; and the composition of the House of Representatives is said to reflect, in exact proportions, the numerical strength of parties in the State. By this plan, with the greatest preponderance a majority is likely to possess, the minority is sure of a representation to detect, resist and expose abuse.

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* William F. Havemeyer.

I differ with my learned predecessor in regard to the power of the Legislature to adopt this plan; and believing that it will prove a check to the tendency of majorities in representative bodies to disregard the rights of minorities, and to forget, in the consciousness of their strength, that the interests of their constituents are paramount to their own, I respectfully recommend that it be adopted in the city of New York, for cases, in which more than one person for the same body is to be voted for.[7]

CRIME.

The alarming increase in frequency of the crime of murder in the city and its environs demands your most serious consideration. Scarcely a day passes without witnessing a brutal, and in many instances a fatal, assault upon the persons of unoffending individuals, usually in drinking saloons, often in the most frequented streets, and sometimes within the very purlieus of justice. According to the reports of the Secretary of State on the statistics of crime there were less than three convictions per annum for murder in the State during the nine years from 1830 to 1838 inclusive. In one of those years there was not a single conviction for that crime. Since then the number of cases in which life is taken has accumulated with fearful rapidity. This deplorable increase is due to a variety of causes. Among them may be enumerated the failure to convict, from the reluctance of jurors to bring in a verdict of wilful murder involving the punishment of death; the difficulty of obtaining juries of competent intelligence; the incapacity or criminal negligence of prosecuting officers; and the delays in carrying sentences into execution by the interposition of legal technicalities. It will be in vain to hope for the suppression of crime, unless the retribution is prompt and certain.

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[7] A revised charter for New York, chapter 335, was enacted at this session. See 1872, *ante*, p. 519. The new charter provided for the election of a board of aldermen composed of twenty-one members, three of whom were to be chosen from each Senate District, but no person could vote for more than two. Provision was also made for the election of six aldermen at large, but no person could vote for more than four.

The leading objects of government are the protection of life and the security of property. No political system can retain the confidence of those who live under it, unless these objects are effectually accomplished. The lamentable manner, in which both have been frustrated in the city of New York, has forced upon the minds of many thoughtful persons the unwelcome question whether their lives and property would not be better secured under a less popular form of government. Nothing can be more deplorable than the suggestions of a doubt as to the superiority of our own institutions over others of a less liberal character. Under this view of the subject the duty of securing property from depredation and life from felonious assault becomes the more imperious and connects itself closely with the durability of our political system; for if the machinery of the law proves inadequate to effect the fundamental purposes of government, it will soon be made to give way to the arm of force.

The difficulty to which I have alluded, in obtaining juries of competent intelligence, arose from the existing rule of law, which had its origin in a period of comparative ignorance, and under which it has been almost impossible to empannel a proper jury, in a capital case. The universal distribution of the press brings to every man's door the narration of passing events, and every intelligent person rises from the perusal with a distinct impression in regard to them. If such an impression is to be treated as an opinion not to be modified or changed on a hearing of the evidence on both sides, intelligence and reflection, the very qualities needed to pronounce a righteous judgment, would disqualify most of our citizens from serving as jurors when a murder is to be tried. Under the act passed at the last session of the legislature a jury has recently been empanneled without unreasonable delay, and it is to be hoped that this enactment will prove in practice a remedy for the difficulty referred to. The further obstacle to the prompt punishment of crime, after conviction, through the interposition of legal technicalities needs to be removed by some proper and effective provision of law.

In framing our system of criminal jurisprudence the merciful purpose of protecting the innocent from unjust conviction was kept chiefly in view. It is worthy of consideration whether in carrying out this purpose we may not have created impediments to the punishment of the guilty and given a rein to crime through its impunity.[8]

PROTECTION AGAINST FIRE.

The conflagration of large portions of the cities of Chicago and Boston, involving an immense sacrifice of property and the loss of many lives, suggests the necessity of revising existing laws in regard to the construction of buildings, and the deposit of combustibles within our principal cities. It is due to the security of property and life that the provisions of law in respect to both should be of the most stringent character. Under the existing law, the superintendent of buildings, in the city of New York, is authorized to modify its requirements, with the consent of the supreme court. It is not to be expected that the members of this body, from the nature of their functions, will be so competent to form a correct judgment in regard to the propriety of such modifications in special cases as others, whose connection with the subjects of fires and insurance, gives them to some extent the character of experts. I therefore recommend that no modification of the law prescribing the mode in which buildings are to be constructed shall be made without the consent of a board to be jointly constituted by the New York Board of fire underwriters and the commissioners of the fire department, the first as having, beside their special knowledge, a large pecuniary interest at stake, and the other from their familiarity with the causes of conflagration and the best modes of contending with it. With these the American Institute of Architects might, perhaps, be advantageously united for the appointment of such a board as I have referred to.[9]

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[8] Chapter 644, passed May 29, changed the definition of murder in the second degree as given in the act of 1862, chapter 197, and also prescribed a different punishment for the offense.

HARBOR MASTERS.

There have been continual complaints for many years in regard to the conduct of the harbor masters, in the city of New York, in assigning vessels to places in the docks, and the extortionate charges of the masters of steam tugs, employed in towing ships, with whom the officers first named are alleged to have, in many cases, a collusive connection; and from the partial examination I have been able to make, I am satisfied that these complaints are well founded. Much of the abuse, which has grown up of late years has, no doubt, arisen from the appointment of individuals from the interior of the State having no knowledge whatever of nautical affairs, or of the wants of the mercantile community, and who are, of necessity, dependent for a time, in the discharge of their duties, on persons whose aim it is to make the largest profit possible out of their services to merchants and shipmasters. They thus become, without evil design, perhaps, at the outset, engaged in a system of extortion, which they find too profitable to be relinquished. To such an extent have these exactions been carried, under the pretence of extra service, that a committee of the legislature, after a careful investigation, did not hesitate to denounce them as a " system of extortion, which may not inappropriately be characterized as organized piracy upon the commerce of New York." The term of the present incumbents, who are now holding over, having expired in March last, I shall deem it my duty to nominate to the senate men of character and tried integrity, who are qualified by their familiarity with the service required of them to perform it intelligently and efficiently. The service was confided to such persons in former years, and it is only since the practice has been discontinued that the present system has come into use, to the great dissatisfaction of the mercantile community and the serious injury of the commercial interests of the city and the State.

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[9] Chapter 397, passed May 2, provided for the incorporation of fire, hose and hook and ladder companies in any city, village or town, and chapter 726, approved June 12, was intended to provide for the more effectual extinguishment of fires in the city of New York.

These officers are now paid by fees, which, together with receipts from other and not legitimate sources, amount to very large sums. I recommend that their compensation be limited to a reasonable remuneration, and that the fees in excess of the amount be paid into the State treasury for distribution among the hospitals in the interior of the State for the support of sick and disabled persons engaged in navigation.

THE CONSTITUTIONAL COMMISSION.[10]

The Constitutional Commission to be reconvened to-morrow, will be charged with the gravest of all duties in reporting amendments to the Constitution of the State, to be submitted to the people for their consideration. Not the least important of these is to provide for relieving the legislative department of the government from passing laws for objects other than those in which the State at large is interested. Of 887 acts passed at the last session of the Legislature only 126 were of a general character. The other 761 were private or local. It would greatly diminish the labor of legislation, if in all cases, where a general law could be made applicable, special laws should be prohibited; and certainly, as a rule, special privileges or immunities should not be granted to any class of citizens, which, upon the same terms, should not equally belong to all others.[11]

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[10] As to the Constitutional Commission, see 1872, annual message and notes 15 to 28, inclusive, *ante*, pp. 394–403.

I trust suitable provision may be made to give to the members of the Legislature a remuneration adequate to their responsible duties. The present compensation was fixed more than half a century ago, and in the meantime the expenses of living are more than doubled. It is neither just nor creditable to the State that its legislators should be kept at a distance from their homes to labor for the welfare of the people, and to protect the interests of their constituents, and be compelled to have recourse to their private means to meet their personal expenses. Superfluous offices should be promptly and unhesitatingly abolished; but all who give their time and talents to the State, should receive a compensation for their services, proportioned to the importance of their duties, and to the expenditures which they must necessarily incur in performing them.[12]

ALIENS.

In more than half the States of the Union aliens are allowed to take, hold and convey real estate. In New Jersey this privilege has been accorded to them with the natural result of attracting foreign capital for investment. In this State the ancient disability is continued, and with the opposite effect of excluding such investments. If foreigners are willing to come among us with their capital to improve our real estate, stimulate our productive industry and aid us in bearing our burdens of taxation, is it not unwise to repel them? The spirit of the age is adverse to the continuance of all illiberal and unneighborly restrictions; and it is respectfully submitted for your consideration whether these disabilities should not be removed. In England, France and other European countries our citizens are placed in this respect on the same footing as their own citizens and subjects; and, apart from the injurious influence of these personal restrictions upon our material interests, it is hardly in consonance with the liberal spirit of our institutions to adhere to ancient prejudices, which have been renounced elsewhere as unworthy of political systems less advanced than our own.

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[11] A provision prohibiting special laws in certain cases was included in article 3, section 18, as recommended by the Constitutional Commission, modified by the Legislature and approved by the people in 1874.

[12] Article 3, section 6, of the Constitution was amended in 1874, by changing the compensation of members of the Legislature from a *per diem* allowance of $3, to an annual salary of $1500, with one mileage.

THE USURY LAWS.

I suggest for your consideration whether the time has not arrived to repeal the usury laws, leaving the established rate of interest to apply to cases, in which no contract or agreement has been made. It is believed that their continuance at the present advanced stage of civilization, and in a State so highly commercial as ours, cannot be defended on any logical grounds. It has been feared that their repeal might in agricultural districts, subject borrowers to the extortion of greedy lenders; but this apprehension has in other communities proved unfounded. In ruder conditions of society, when the laboring classes were, to a great extent, dependent on capitalists, there was a plausible argument in favor of limiting the rate of interest. But at the present day, when the eagerness to lend is quite as prevalent as the desire to borrow, and when labor has become independent and powerful, it needs no protection, direct or indirect, against capital in competing with it for the profits of production. In most of the neighboring States restrictions on traffic in money have been removed, and I believe there is good authority for saying that no practical inconvenience has ensued. It is quite clear that in the city of New York, but for scruples on the one hand and fears on the other, by which conscientious and timid capitalists are restrained from lending at prohibited rates, the enormous interest paid, under the pressure of extraordinary demands, for the use of money could not be maintained for a single day. It is only by establishing an arbitrary and fixed standard of value for it, when such value will, in spite of all legal limitations, conform to the fluctuations of commerce, that borrowers are made to suffer through the necessity of paying unscrupulous lenders a premium for violating the law.

Should you not be prepared to follow the example of Massachusetts, Rhode Island, Connecticut and other States by an absolute repeal of the usury laws, I can conceive no possible objection to their modification so far as to leave the rate of interest to be fixed by agreement of the parties on commercial paper, and on loans secured by the mortgage or hypothecation of personal property.

TAXATION.

I respectfully call your attention to the reports of the Commissioners appointed to revise the laws for the assessment of taxes heretofore made to the Legislature, and to the draft of a bill submitted by them in the performance of their duty. It is not denied that the existing laws for the valuation of property and the assessment of taxes are unequal, unjust and ineffective; that the valuation of real estate falls far below its actual value; that much the larger portion of the personal property of the State escapes taxation, and that the tax on mortgages of real estate not only prevents the introduction of capital from abroad, but is rapidly expelling our own heretofore loaned on such security, and transferring it to States in which no such tax is imposed. The objection to this tax does not come from lenders, but from borrowers, and from the owners of real estate, who find it difficult to procure money for improving it. In the city of New York, where there is a deficiency of dwellings, especially for the industrious classes, and where the population is for that reason crowded into narrow spaces, such an imposition is not only a serious obstacle to the extension of the city, but is in the nature of an excise on the health and comfort of its inhabitants. While real estate is known to be valued at one-third or one-half what it is worth, mortgages, where they do not escape the scrutiny of assessors altogether, are appraised at their full value, thus constituting a most unjust and oppressive distinction between two classes of property holders.

While New York has been clinging with a tenacity, for which it is difficult to account, to anti-commercial restrictions, Pennsylvania and New Jersey have been gradually removing them for the purpose of attracting labor and capital. The result of our inaction and their progress in this respect is illustrated in a manner which should give us cause for grave reflection. During the last ten years the population of New Jersey has increased at the rate of 35 per cent, and that of Pennsylvania at the rate of 21, while ours has increased only at the rate of 13. The natural advantages of New York, especially for commerce, far exceed those of other States; but they are not great enough to enable us to contend successfully with the rivalry of neighbors, quite as enterprising as ourselves, unless labor and capital are encouraged by laws as liberal as theirs. It vitally concerns us, therefore, to consider whether we can maintain our ascendency in population and wealth; whether we can succeed in retaining the title of preeminence, which we have borne with the consent of our cotemporaries for half a century; and whether we can preserve our reputation as an enlightened administrator of our own affairs, if we have not the wisdom and courage to cast off the antiquated clogs and badges of an obsolete civilization.

In conclusion, I cannot forbear to express my great anxiety to cooperate with you zealously and in perfect harmony in such measures as, in your superior wisdom, you may deem necessary to accomplish the objects of reform so imperiously demanded by our constituents. We come together sustained and honored by a larger majority than the people of the State have ever before given to their representatives. It is my sincere desire, and I am sure it must be yours, to respond to their confidence by maintaining the public credit, by reforming abuses of administration, by economizing the means placed at our disposal for the general good, by lightening the burdens of taxation, by cherishing the institutions and establishments which minister to the wants of the people, and by devoting our best abilities to the advancement of the prosperity of the State.

JOHN A. DIX.

SPECIAL MESSAGES.

January 14. To the Assembly: Transmitting the annual report of the Adjutant General, also the report of the Commissioner appointed to the International Penitentiary Congress at London.

January 15. To the Senate: Transmitting the report of Governor Hoffman on pardons for 1872.

February 4. To the Assembly: Transmitting the annual report of the Commissary General and Chief of Ordnance.

February 10. To the Assembly: Transmitting the report of the Cooper Union for the Advancement of Science and Art.

February 17. To the Senate: Transmitting the report of the Commission appointed by Governor Hoffman for the purpose of visiting and investigating the charges made against lunatic asylums in this State; also an act accompanying the same. For report see Senate Document, No. 40.

February 17. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *February* 17, 1873.

"Under the provisions of the act entitled 'An act to provide for furnishing two statues of eminent deceased citizens of this State to be placed in the Capitol at Washington, in compliance with the invitation of the President of the United States,' passed May 6, 1872, a contract has been made for furnishing a marble statue of George Clinton, one of the two statues to be placed by this State in the Capitol at Washington. The subject of the other statue was left to be designated and the statue provided for by the present Legislature. Among the most distinguished men who have been citizens of this State was Alexander Hamilton and John Jay, but as a statue of the former and a bust of the latter are already in the Capitol, Robert R. Livingston will no doubt occur to many as fulfilling the conditions of the act of Congress, under which each State is invited to furnish two statues 'of deceased persons who have been citizens thereof, and illustrious for their historic renown or from distinguished civic or military services.' I do not desire, by this suggestion, to influence the decision of the Legislature in making a selection which may better be left to their unbiased judgment.

But there is one subject in regard to which I wish to call their attention. I think the provision in the act of the Legislature requiring the statue of George Clinton to be of marble could not have been sufficiently considered. The act of Congress leaves it optional with the States to 'furnish statues in marble or bronze.' The former, from its brittleness, is always in danger of becoming mutilated, either by accident or by the wantonness of mischievous persons. Some of the most valuable of the ancient marbles have suffered so much that it is doubtful whether the parts which have been restored conform to the originals, while statues in bronze have stood from fourteen to fifteen centuries in the open air without sustaining any injury from lapse of time or from violence.

It is not too late to provide that both statues shall be of bronze, as the cast for that of George Clinton is not yet completed; and, if the change should be authorized, the representatives of the two distinguished citizens of New York may reasonably be expected to endure as long without injury as the edifice in which they are to be placed.[13]

JOHN A. DIX."

February 18. To the Assembly:

Veto of a bill entitled "An act in relation to bridges in the town of Ausable, Clinton County, and the town of Chesterfield, in Essex County."[14]

"This bill authorizes the commissioners of highways of the towns therein named to impose a fine of five dollars for riding or driving, on a bridge to be built across the Great Ausable river, faster than a walk.

No necessity is perceived for making this case an exception to the general law, which authorizes the commissioners of highways of towns to impose a fine of one dollar for riding or driving over bridges faster than a walk. If this should become a law, there would be no good reason for denying the same authority to the commissioners of highways in any other town of the State on a separate application to the Legislature. If the penalty authorized by the general law is too small, it ought to be increased by an amendment.

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[13] Chapter 181, passed April 7, amended the act of 1872, chapter 537, which provided for a marble statue to Governor George Clinton, by providing also for a statue to Robert R. Livingston, and requiring that both statues be in bronze. See 1872, special message of March 2, and note 34.

[14] See 1870, note 27, ante, p. 149. Chapter 477, passed May 9, 1873, authorized commissioners of highways to prescribe a penalty of $1 and not more than $5 for riding or driving faster than a walk.

This bill is one of those special acts of legislation by which the statute books are encumbered, and which confer on a limited number of persons or municipalities privileges or immunities that may be claimed with equal right by all."

The bill was not passed over the veto.

March 21. To the Assembly: Transmitting the annual report of the Society of the New York Hospital.

March 28. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *March* 28, 1873.

"I herewith transmit two communications from Maj. Gen. John Newton and George W. Blunt, Pilot Commissioners, in regard to the danger to navigation in the harbor of New York and on the Hudson river, caused by the practice by steamers of discharging their ashes, cinders and slag into those waters, thus contributing to the formation of bars and shoals. These results are already shown in the shallow portions of the river below the city of Albany, and in the harbor of New York. The constantly increasing traffic between the latter and the interior of the State of New York and the western States, renders any impediment to navigation a matter of the most serious consideration. A very considerable expenditure is annually incurred for the removal of natural obstructions, and it ought not to be increased by artificial causes.

I ask the early attention of the Legislature to the subject, with a view to such remedial measures as it may deem feasible and proper.[15]

JOHN A. DIX."

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[15] Chapter 713, approved June 11, which appropriated $50,000 for dredging the Hudson river from Troy to Coxsackie, and appointed commissioners to superintend the work, also authorized the commissioners to prescribe rules relative to the dumping of earth, stone, gravel, cinders or any other materials in or near the said river, and made a violation of such rules a misdemeanor.

April 2. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *April* 1, 1873.

"I transmit a communication from the Secretary of War asking the consent of this State to the purchase by the United States of certain lands pertaining to the military post at West Point, and a cession by this State of its jurisdiction over said lands.[16]

I also transmit a communication made by order of the Secretary of War, accompanied by a copy of an act of Congress, asking a like cession of jurisdiction over two lots of ground purchased by the United States for the purpose of maintaining a National Cemetery from the Cypress Hills Cemetery Association on Long Island, near the city of Brooklyn.

JOHN A. DIX."

April 4. To the Senate:

Veto of a bill entitled "An act relating to the town officers and local government of Newtown, in Queens County."

"This bill changes, in many material respects, the general law under which the local governments of the towns in the State are organized. Were there no other objection, the bill ought not, in my judgment, to become a law. Well-considered provisions for the election of the officers of towns, and for the management of their affairs, have been prescribed for all, and the organization of a special form of government for a particular town is a departure from the established system for which no good reason is apparent; moreover, it is in direct conflict with the policy of abstaining from local legislation, except in cases of manifest urgency or necessity.

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[16] In 1875, by chapter 359, passed May 15, jurisdiction was ceded to the United States over land acquired at West Point to be used "for the erection and maintenance thereon of forts, arsenals, docks and piers, military academy, hospitals and other needful buildings, and for the maintenance of the national cemetery and an observatory."

Independently of this general objection, there are others of detail which are insuperable. Among these are the provisions of section 19, by which town meetings are not only to be presided over by one justice, but the particular justice to whom this trust is delegated is specially designated as the one 'having the shortest time to serve;' and, as such presiding officer, he is, by section 25, authorized to appoint the third inspector of elections to be associated with the two others who are elected by the qualified voters.

There are other special provisions, which, if proper in this case, are equally so in others, and should be extended by a general law to all the other towns in the State. If the bill be intended to remove grounds of dissatisfaction with certain town officers, a much more legitimate remedy will be found in the elective franchise, which may always be relied on for the eradication of evils or abuses in the exercise of official trusts, whenever the majority of the voters are convinced that such evils or abuses really exist."

The bill was not passed over the veto.

April 8. To the Assembly:

Veto of a bill entitled "An act to legalize the adoption of Ella Deming, a child of George W. Deming, as daughter of Ann Deming, of Edmeston, in the county of Otsego."

"Mrs. Ann Deming is a widow of full age, and Ella Deming is also over twenty-one years of age. A bill is now before the Legislature authorizing the adoption of minors, and I am not aware that a proposition has ever been made to provide by law for the adoption of adults. Mrs. Deming can establish between herself and Ella the familiar personal relation for which the bill provides.

The provision which gives Ella Deming 'all the rights of inheritance as a legitimate daughter and heir of Ann Deming' is entirely unnecessary, unless it is intended to divest other heirs of their right. Mrs. Deming as a widow is competent under the statutes to make a will bequeathing all the estate, real and personal, to which she has an absolute right, to Ella. Similar cases are constantly occurring in the vicissitudes of life, and are made effective by act of the parties without the interposition of the Legislature. I have inquired into the circumstances, and find that a legislative enactment is sought for rather for the gratification of a fancy than from the belief that any legal authority is necessary. I do not think this is a just cause for legislation, nor do I think it right that the statute book should be encumbered by needless laws; and I am confident that the Legislature will, on reflection, concur with me in my opinion."

The bill was not passed over the veto.

April 9. To the Senate:

" EXECUTIVE CHAMBER,
ALBANY, *April* 9, 1873.

" I transmit herewith a report to the present date by a board of officers appointed by the President of the United States, in compliance with a resolution of the Legislature at its last session, to examine into and revise the exterior pier and bulkhead lines of the harbor of New York on the Brooklyn side.

I also transmit a letter from Lieutenant Colonel Newton, one of the board, with additional information, and their charts in illustration of their report.

JOHN A. DIX."

[For report see Senate Document No. 77.]

April 10. To the Senate:

" EXECUTIVE CHAMBER,
ALBANY, *April* 10, 1873.

" I transmit herewith a communication from the Governor of the State of Maine, with a resolution of the Legislature of that State, in regard to the exaction of half pilotage from vessels of one hundred tons burden and upwards passing Hell Gate when no pilot service is rendered.

Under existing laws, licensed or coasting vessels, entering the harbor of New York by way of Sandy Hook, are not required to pay pilotage unless they take a pilot. On the other hand, coasting vessels of one hundred tons burden and upwards, navigating the channel of Hell Gate, are required to pay half pilotage when they take no pilot.

This requirement is objected to as unjust and oppressive by the Legislature of Maine; and there seems to me no ground for the distinction between vessels entering the port of New York through different channels. The exaction of pilotage on vessels engaged in commercial transactions between New York and other States, when no pilot service is rendered, appears to me to be unneighborly and unreasonable; and I respectfully recommend that the act of April 5, 1871, chapter 593 of the Session Laws of that year, be so amended as to exempt all coasting vessels from the requirements referred to.

I have deferred transmitting this communication to you for the purpose of ascertaining the amount of pilotage collected on vessels passing through Hell Gate channel. The records of the port warden's office in the city of New York show that the whole amount of pilotage collected on all vessels navigating that channel for April 5, 1871, to March 12, 1873, was $89,107.50, distributed as follows:

Number of foreign vessels piloted, 1,469	$24,028.66
Number of American vessels subject to pilotage, 4,056	43,203.58
Number of American vessels not subject to pilotage, 1,837	12,034.11
Amount of half pilotage collected in 1818	9,771.15
Total	$89,107.50

It is by no means certain that this statement is accurate; but it is sufficiently so to show that the abolition of half pilotage on coasting vessels, which do not take pilots, will be no hardship to the latter. Even if it were otherwise, it would be unjust to the city of New York, and to those who are engaged in the coasting trade to keep up an anti-commercial exaction for the benefit of any body of men; more especially when the same class of vessels entering the port of New York by a different channel are exempt from it.

JOHN A. DIX."

April 14. To the Assembly:

Veto of a bill entitled "An act in relation to lands heretofore conveyed to assignees and receivers."

"It was my impression, on examination of this bill, that the object for which it was intended to provide, could be accomplished under existing laws; and this view of the subject is confirmed by the opinion of the Attorney General, to whom I referred it. I fully concur in the objections stated in his letter, a copy of which is subjoined."

The following is the Attorney General's letter:

OFFICE OF THE ATTORNEY GENERAL,
ALBANY, *April* 12, 1873.

HON. JOHN A. DIX, Governor, etc.:

SIR.— You ask my opinion as to the bill entitled 'An act in relation to lands heretofore conveyed to assignees and receivers.'

The bill provides that in all cases where lands have been conveyed to assignees or receivers more than twenty-five years prior to the passage of this act, and no conveyance thereof shall have been made by such assignees, etc., the trust shall be deemed satisfied, and the lands shall be deemed to have reverted to the grantor or his heirs free from the deed to the assignees or receivers. I think the bill is objectionable as seeking to accomplish by legislation that which should be left to the courts. Any person interested can now file a bill to compel the execution of such a trust, and he will obtain relief according as the particular circumstances of the case may entitle him to it.

There may be some good reason why a trust should have remained unexecuted, and the land unconveyed for more than twenty-five years, and it may work injustice to arbitrarily declare, as proposed by this bill, that mere lapse of time shall be deemed to have satisfied the trust. The notice required to be published in the county in which the land is situated, may well fail to reach the persons interested, and thus their rights may be sacrificed by the peremptory and arbitrary law, which is evidently passed to relieve some one person from the trouble of applying to the courts for relief. I think this kind of legislation is unnecessary, and for that and the other reason above mentioned, objectionable.

FRANCIS C. BARLOW, Attorney General.

The bill was not passed over the veto.

April 22. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *April* 22, 1873.

"I have the honor to transmit, herewith, a copy of the joint resolutions adopted by the General Assembly of Virginia on the 26th day of March, 1873, together with a copy of the message referred to.

JOHN A. DIX."

The Legislative records do not contain the text of the Virginia resolution, but it may be found in the session laws of that State of 1873, from which it appears that the Governor, in a message to the Legislature, recommended "the assumption and payment of the existing debts of all the states by the United States government.'' The Legislature by a joint resolution concurred in the Governor's message as '' wise, just and expedient.''

April 23. To the Senate: Transmitting a report presented by the grand jury to the Court of General Sessions in the city of New York on the 17th of April, 1873, relative to the usury laws. [For report see Senate Document, No. 86.]

April 23. To the Assembly: Transmitting certain proceedings of the New York Produce Exchange relative to canals.

May 5. To the Senate:

Veto of a bill entitled "An act in relation to the salary of the assistant clerk of the third (police) judicial court of the city of New York."

''As payment of the salary legalized by this bill had been refused by the comptroller of the city of New York, I submitted it to him for the purpose of ascertaining the grounds of his decision, and his letter is transmitted herewith, together with a paper containing 'memoranda' relative thereto, and a copy of the pay-bill of the appointees of said court. The comptroller's opinion is founded upon the assumption that the appointment of the assistant clerk of the third (police) judicial court was in violation of the 7th section of chapter 875 of the Laws of 1869, which he recites, and 'which provides that the board of supervisors shall create no new office, except as provided by acts passed by the Legislature.' His inference appears to be that the authority of the Legislature should be given thereafter to the creation of any new office, and that chapter 264 of the Laws of 1858, which gives to the police justices the power to appoint clerks or assistants, with the approval of the supervisors, is not such an ' act of the Legislature ' as is meant by the above quoted passage from the law of 1869. In order, therefore, to give the supervisors the power to create a new office within the meaning of the act of 1869, the creation of the particular office should have been expressly authorized by a subsequent act of the Legislature.

I have been informed, though at too late a period to ascertain by personal examination, that it was decided in an analogous case at the general term of the supreme court that the provision of chapter 875 of the Laws of 1869 did not take away the power of the police justices to appoint assistant clerks under chapter 264 of the Laws of 1858.* If this be so, and the cases are identical, the comptroller's opinion is erroneous, and the courts would, on the application of the assistant clerk, issue a mandamus to compel the payment of his salary. In such a case there would be no need of the interposition of the Legislature. If the appointment was legally made, no good reason is perceived for seeking a confirmation of it from the Legislature, unless it be to impose upon the municipal authorities of the city of New York, under the reformed charter, an incumbent over whom they might have no control.

It is the opinion of the Comptroller and of the Attorney General, whom I have consulted, that this bill would perpetuate the office he holds. It was created at a period of gross abuse, when swarms of useless employees were thrust upon the city in defiance of law. It has no claim to the consideration of the Legislature if it was illegally made; it has no need of legislative interposition if it was made with legal authority.

I deem it proper to add, that the exercise of the legislative power of the State seems to me too elevated and grave in its character to be interposed for the adjustment of individual claims, unless they are indisputably just, and unless the ordinary legal remedies have been exhausted.

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* See Drake v. Mayor, etc. New York (1873) 7 Lansing 340.

It is in view of this principle that I respectfully return a bill which I might not otherwise have considered of sufficient importance to be objected to."

The bill was not passed over the veto.

May 6. To the Senate: Transmitting the resignation of Oswald Ottendorfer as regent of the University.

May 7. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *May* 7, 1873.

"It is my painful duty to announce to you the death of the Hon. Salmon P. Chase, chief justice of the United States, in the city of New York, to-day.

I make this communication with the assurance that it will be the wish of the two Houses to unite in such an expression of respect as they deem due to his eminence as a statesman and a jurist, and the distinguished place he filled in the government, the purity of his life, and his patriotic services to the country.[17]

JOHN A. DIX."

May 12. To the Assembly:

Veto of a bill entitled "An act relative to widening, straightening, opening and grading of 167th Street in the town of Morrisania, in the county of Westchester."

"This bill names and appoints nine commissioners, and directs them to widen, straighten, open and work the street designated in the title. By act chapter 277 of the Laws of 1864, a board of trustees for the town of Morrisania was created and their powers defined. Among these powers was that of opening, grading and constructing all streets, roads and highways in said town, under certain restrictions and limitations set forth in the said act. By act chapter 841 of the Laws of 1868, a board of commissioners was designated for the purpose of laying out streets, roads and avenues in said town, conferring on said commissioners exclusive power to give to such streets, as they may deem necessary to the town, the width, extent and direction which to them may seem most conducive to the public good, subject to appeal.

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[17] Each house appointed a committee to attend the funeral of Chief Justice Chase, and adopted resolutions describing his public services, and expressing the loss which the State and Nation had sustained by his death.

There are other acts defining the powers of the board of trustees in regard to raising money by taxation for working and repairing all roads declared public highways and conferring on them the power to open all streets, roads and highways in said town.

In this case no reason is assigned for disregarding the authority of the trustees, who are the best judges of the necessity of improvements of this nature, and for resorting to the Legislature for a special act overruling them in the performance of their appropriate duties. It appears by a protest against the bill, that the lands through which the street is proposed to be opened belongs to a single proprietor, and that the whole expense is thrown upon him.

Apart from this objection, the bill appears to me to be one of those special acts from which the Legislature should abstain. First, because it is unnecessary; and second, because of the exercise of the legislative authority to accomplish a local object, it overrules the powers it has already conferred for the purpose on the town officers, who are the best judges of the wants which they are created to provide for."

The bill was not passed over the veto.

May 13. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *May* 12, 1873.

"Pursuant to a resolution of the Senate of the 30th ult., I appointed Robert G. Hatfield, an experienced architect, to examine into the condition of the Hudson River State

Hospital, at Poughkeepsie, in the respects indicated in said resolution, and I transmit herewith his report of such examination. [Sen. Doc. 107.]

In pursuance of a similar resolution of the Senate of the 6th inst., I appointed the same architect to make an examination of the State Reformatory, at Elmira, and his report of such examination is transmitted herewith. [Sen. Doc. 106.]

JOHN A. DIX."

May 20. To the Assembly:

Veto of a bill entitled "An act to enable the legal voters of any town or city to determine by ballot, whether the sale, exposing for sale, giving away, or suffering to be exposed, sold or given away therein of intoxicating liquors, shall be prohibited, and to regulate the sale for medicinal, mechanical, chemical or sacramental use, and to provide for the enforcement of this act."

"No one can be more anxious than myself to repress, by all just and effectual measures of legislation, the evils of intemperance — the undoubted source of four-fifths of all the crime, pauperism and domestic misery in the State, and I would not willingly throw any impediment in the way of the praiseworthy efforts which the friends of humanity and good government are making for the purpose of remedying these evils.

The bill submits to the people of the towns and cities of the State the question whether the use of intoxicating liquors, except for special purposes, shall be prohibited within their respective limits. It professes to leave to the people the right to determine for themselves in this respect what is most conducive to their own good. I fully concur in the correctness of this proposition as a matter both of principle and policy; and I have never doubted the propriety of adopting such measures of legislation as are needed to secure the result. It lies in the direction of popular liberty — of the right of the people to regulate their local affairs in such manner as they deem essential to their welfare.

My chief objection to the bill is that it contains a limitation of this principle. It leaves to the people of the several cities and towns only a partial and restricted option in deciding what it shall be lawful to drink within their respective municipal limits. It compels them to prohibit absolutely, or virtually, to accept by declining to prohibit every beverage which can by possibility intoxicate. It permits them to express their wishes on a single proposition, but precludes such an expression on any other. It says to them in substance — if you wish to prohibit the use of ardent spirits within your limits, you must prohibit the use of ale, beer and cider also; for these have, by a decision of the court of appeals, been classed with intoxicating liquors.* If, on the other hand, you wish the inhabitants of your town or city to have the privilege of drinking beer or cider, you cannot have it unless you make the use of ardent spirits equally free from restriction. You must prohibit all or none. You cannot have the one without the other.

There may be, and undoubtedly are, communities in which a strong desire prevails to banish spirituous liquors, the intemperate use of which is the source of so much vice and poverty, and in which the desire is equally strong to leave the use of lighter beverages unrestricted. In order to carry out the first named wish under this bill, they must renounce the latter; or, if they carry out the latter, they must renounce the former. The bill, therefore, while professing to leave to the people the largest liberty in this respect, restricts them to the narrowest; they are not permitted to have a choice as to what beverages it shall be lawful to use within their respective boundaries. The bill is framed in the interest of restriction, and not of freedom of choice.

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* See Com'rs. of Excise of Tompkins Co. v. Taylor (1860), 21 N. Y. 173.

I deem this narrow view of the subject exceedingly unwise. A wide difference of opinion prevails among the people of the State in regard to the propriety of distinguishing between ardent spirits and the lighter beverages, some of which do not intoxicate unless taken in uncomfortable quantities, and which, in countries where they are in general use, have proved a restraint upon the consumption of spirituous liquors, and, to a great extent, a safeguard against the prevalence of intemperance. I do not assume to decide which class of thinkers has the right side of the question. But a just toleration of the freedom of opinion ought to restrain the advocates of either from attempting to maintain their position by compulsion. It is in this view that I deem the provisions of the bill indefensible. I do not suggest that it should have exempted the lighter beverages from the option which the people were called on to express. That would have been a restriction on their action and the freedom of choice. I think the Legislature decided wisely not to restrict them in this direction. But it has restricted them in the opposite; and I submit that in order to afford them the largest liberty in the action they were called on to take at the coming election they should have had the opportunity of saying whether the prohibition should embrace ardent spirits only, or whether it should exclude the lighter beverages. I think the people are entitled of right to this privilege. To withhold it from them by submitting the general proposition contained in the bill and compelling them to tolerate the use of spirituous liquors, as it would, in cases where they were unwilling to prohibit the use of the lighter beverages, is, not only a restraint upon the freedom of their choice, but a distrust of their capacity to decide rightly, in which I cannot consent to unite.

The bill in some of its details appears to me to be equally open to objection. By the eighth section every overseer and superintendent of the poor, assessor, town clerk, supervisor, village trustee, district attorney, sheriff, or constable, or police officer in any town, where local prohibition is adopted, if he knows any person, who is in the habit of becoming intoxicated, is required to give notice thereof, in writing, to all persons who may be authorized under the seventh section to 'sell intoxicating liquors for medicinal, mechanical, chemical, or sacramental use.' By the ninth section any person who shall willfully neglect or omit anything required to be done by the bill, is made to forfeit the sum of one hundred dollars, for the first offense, and in default of payment, to be imprisoned in the county jail or penitentiary not less than sixty days, nor more than six months; and it is made the duty of the district attorney of the county to sue for any penalty incurred under the provisions of the bill.

By virtue of these provisions, if there is a drunkard in any town where prohibition is adopted, a large number of officers, and if there is a village within it, a still larger number are required to report him under penalty of fine and imprisonment, at all places where intoxicating liquors may be sold. These places may be indefinite in number; for 'any person,' no matter what his character may be, by giving his bond for one thousand dollars with two sureties, each justifying in double that amount, may sell 'intoxicating liquors for medicinal, mechanical, chemical or sacramental use.' The sellers are under no obligation to ascertain whether the purchases are made in good faith for the purposes specified. They cannot sell liquors to be drunk or used on the premises, nor to a person in the habit of becoming intoxicated, a minor, or any one to whom they have been notified not to sell; and they are required to keep open for inspection books in which all their purchases and sales shall be entered. But there is no public officer to whose discretion it is left to decide whether the persons entrusted with the sale of intoxicating liquors are worthy of the trust. Under the existing law the boards of excise in cities, towns and villages have power to grant licenses ‘to any person or persons of good moral character, who shall be approved by them.’ No such provision is made in the bill under consideration. All that is required is that the form of the bond and the sufficiency of the sureties shall be approved by the county judge. There is no limitation as to the number of persons who may engage in the traffic, and no power to withhold the privilege from a man of bad character. This power, under the license law, is a practical limitation. The bill under consideration has in neither of these respects the restraints contained in the existing law.

I doubt exceedingly whether the bill, with its numerous defects, is in the interest of the cause of temperance. I am not sure that it is not as likely to promote the evils it is intended to check, and remove. To any bill formed with a liberal regard to the differences of opinion which exist in all communities, and to the freedom of action which, within just limits, is a fundamental principle in ours, and which shall contain proper safeguards against the abuse of the traffic it authorizes, I shall give a most cheerful assent. By withholding my approval from this bill no great inconvenience can possibly be caused. If I had approved it it could not have gone into operation until thirty days after the annual election in November — one month before the meeting of the next Legislature. Although the session is now so far advanced, there is time to frame a new bill, to amend the defects of this and make it what it should be — an enactment which shall secure to the people in each city and town an unlimited freedom of choice in a matter intimately connected with their local interests. Or, if the subject shall go over to the next Legislature, the people of the State will have time to give it their mature consideration, and elect their representatives in reference to it.”

The bill was not passed over the veto.

May 21. To the Senate:

Veto of a bill entitled "An act for the relief of James Galway."

"The bill directs the comptroller of the city of New York to refund to James Galway certain moneys paid by him on assessments annulled subsequent to such payment by the supreme court.

It is the business of every person on whose property asessments are made to see that they are regular. All have the same facilities for so doing. In this case the payment was made by Galway supposing the assessment to be legal. Others obtained subsequently a decision that it was not so, and he seeks to obtain, through the Legislature, the benefit of the decision. Cases of this description are constantly occurring in the city of New York. I may say they may be numbered by thousands, and it would lead to endless confusion if all money so paid could be recovered.

I cannot think that it is the legitimate province of the Legislature to interpose its authority for the purpose of settling private claims against municipal corporations. There are legal remedies in such cases as well as in transactions between individuals; and if these remedies are lost through a mistake of a claimant, or through a want of diligence on his part, he should not be permitted to use the legislative power of the State to shield him from the consequence of his own error."

The bill was not passed over the veto.

May 22. To the Assembly:

Veto of a bill entitled "An act for the relief of George L. Loutrel."

"It appears by a letter from the comptroller of the city of New York, which I transmit herewith, that the assessment from which Mr. Loutrel asks the Legislature to enable him to commence proceedings to set aside, was confirmed more than three years and a half ago, and that certain parties were relieved from it on account of irregularities. He could have availed himself of the decision rendered in favor of these parties, if he had applied to the supreme court in time. The comptroller states that the Legislature passed an act at its last session providing that no assessment previously made shall be vacated on account of such technical irregularities; and Mr. Loutrel seeks to be relieved from the operation of this act.

I have, in a similar case, expressed the opinion that the Legislature should not interpose its authority to settle claims on the part of private persons against municipal corporations, especially when relief is sought from proceedings which are closed, and which cannot be reopened without establishing a precedent leading to great confusion and public inconvenience. The impolicy of each interposition in this case will more fully appear by the comptroller's letter."

The following is the Comptroller's letter:

CITY OF NEW YORK.

DEPARTMENT OF FINANCE,
COMPTROLLER'S OFFICE, *May* 12, 1873.

To His Excellency JOHN A. DIX, Governor:

DEAR SIR.—I have received from the Executive chamber a copy of an "Act for the relief of George L. Loutrel."

This act authorized George L. Loutrel to commence proceedings to set aside an assessment on certain lots on north side of 133d street, near 4th avenue, for constructing a sewer in 4th avenue.

The records of this department show that a sewer was constructed in 4th avenue, between 132d street and Harlem river, and confirmed November 8, 1869, and the property of Mr. Loutrel was assessed for benefit derived from this sewer being a charge of $98.40 on four lots situated as described in this act. The city performed this work for the benefit of the owners of the property, and an assessment levied to cover the cost of constructing said sewer, owing to a technical objection some of the lots were released from the assessment by the supreme court. The Legislature last winter passed an act providing that for these technical irregularities no assessment heretofore laid should be vacated. Mr. Loutrel not having taken proceedings, this act cuts him off from this application. Should a precedent of this nature be established it would be very unfortunate, involving many hundreds and perhaps many thousands of cases similarly situated. The city exercised good faith in the performance of the work and the owners should pay the assessment.

I see no reason why Mr. Loutrel should not be required to pay his.

The bill in my opinion should not become a law.

With very great respect,
AND. H. GREEN,
Comptroller.

The bill was not passed over the veto.

May 26. To the Assembly:

Veto of a bill entitled "An act for the improvement of Grass River and its tributaries."

" The bill appropriates ten thousand dollars for the purpose specified in the title. By chapter 801 of the Laws of 1872, twenty thousand dollars were appropriated for the same purpose, ' ten thousand dollars in the year eighteen hundred and seventy-two, and ten thousand dollars in the year eighteen hundred and seventy-three.'

The amount appropriated for last year has been expended by the Commissioners and paid by the Comptroller. The sum of ten thousand dollars appropriated for this year is still unexpended, and is subject to expenditure by the Commissioners, and payment by the Comptroller, on filing the detailed statement prescribed by the fourth section of the act.

The effect of the bill under consideration, therefore, is to appropriate ten thousand dollars more, making in all twenty thousand dollars to be expended during the present year for the improvement of Grass river and its tributaries. I cannot think the bill would have received the sanction of the Legislature, if the facts above stated had been known.

I deem this a proper occasion to state some general views in regard to appropriations of public money for objects of this description. They are essentially local in their character. They almost exclusively benefit certain classes. Their purpose is to remove obstructions from streams, on which there are large bodies of timber, and to construct dams to facilitate the collection and passage of logs to mills below, where they are sawed and manufactured into lumber. If these improvements were not made by the State they would be made by the owners of these timber lands in order to bring their lumber to market. The result of these appropriations is, therefore, to take from the treasury of the State money derived from taxes and put it into the pockets of the lumbermen, adding the amount of these appropriations to their profits. In this manner the property, real and personal, of the inhabitants of Queens, Chemung and Cattaraugus, is taxed for the benefit of a certain class in the counties in which these moneys are expended.

In eighteen hundred and fifty an appropriation was made to improve the navigation of the Racket river, in St. Lawrence county, and there were moderate appropriations in subsequent years until eighteen hundred and fifty-seven, amounting in all to twenty-five thousand dollars. The alleged ground on which they were made was, that the State had on and near the river a large quantity of lands, which would be greatly enhanced in value, and thus repay the expenditure, and one of the sections of the bill limited the price at which these lands might be sold. Since that time there have been repeated appropriations for like improvements, but few of them with the same pretense of benefit to the State.

I have now before me four bills for the improvement of rivers, in favor of which I can discover no argument, except that of private or local benefit. It is alleged that by removing obstructions, constructing dams, etc., lumber, which otherwise would remain in the forest, will be brought to the canals and repay in tolls the cost of the river improvements, by means of which they are enabled to reach the market.

But it is by no means certain that the increased value of lumber, which is now becoming more scarce, will not cause these improvements to be made at the expense of the owners, and thus render it unnecessary for the State to incur expenditures which cannot, in my judgment, be thrown upon the treasury without violating a fundamental principle of government.

It is said, and with apparent reason, that St. Lawrence and Franklin, the counties in which these rivers for the most part lie, have contributed largely to the Erie canal, from which they have derived no direct benefit, and that the proposed expenditures for their improvement would be but a fair equivalent. There is this difference in the two cases, that the Erie canal was constructed not only for internal convenience, but as a channel for the products of the west to the ocean. It is not a local, but in every point of view a State work. It has made the city of New York the emporium of the country, and it has enriched, more or less, every county in the State. If we can trust to the evidence of statistical data, St. Lawrence and Franklin have shared as largely in the general progress as many of the counties lying directly npon the Erie canal.

The increase of population is one of the chief indices of the prosperity of a community; and tried by this standard the two counties first referred to are far in advance of the latter. They have both added more than two hundred per cent. to their population since eighteen hundred and twenty-five, the year the Erie canal was opened, while Herkimer and Ontario have added only twenty per cent. Even the county of Oneida, intersected in its whole length by the Erie canal, with the Chenango and Black River canals to connect it with the counties north and south, has only added ninety per cent. to its population, an increase more than one hundred per cent. less than St. Lawrence and Franklin. These counties which have been so uniformly on the side of sound principles will not, I am satisfied, on reflection, be unwilling to forego inconsiderable appropriations by which their inhabitants are only partially benefited, and which involve the infraction of a rule of general acceptance with the friends of reform and good government, that public moneys raised by general taxation ought not to be expended for private or local benefit, but for objects only in which all have an equal interest."

The bill was not passed over the veto.

May 30. The Legislature adjourned without day.

ACTION ON BILLS AFTER ADJOURNMENT OF THE LEGISLATURE.

October 4.

Veto of the following bills:

Senate bill No. 497, entitled "An act to incorporate Oriental Lodge Number Two Hundred and Sixty-seven, Independent Order of Good Templars."

" The objects of this bill may be accomplished under the general law authorizing the formation of benevolent and charitable societies, etc."

Senate bill No. 356, entitled "An act to incorporate the Cohoes Hotel Company in the city of Cohoes."

"All the objects in contemplation of this bill can be accomplished under chapter 657 of the Laws of 1871, and other amendments of chapter 40 of the Laws of 1848.

Senate bill No. 148, entitled "An act for the improvement of the east and west branches of the St. Regis River."

" Chapter 855 of the Laws of 1871, made an appropriation of $10,000 ' for clearing and improving the channel of the east and west branches of the St. Regis river, and for the construction of such piers, booms and dams as may be necessary for the passage of logs and other lumber over and through said channels.' The first section of this bill makes a further appropriation of $10,000 for the same purpose; and the second section expresses the object in terms nearly identical with the language above quoted. The proposed appropriation of money raised by taxation on the property of the people of the whole State is intended for the special benefit of the lumber men of a very limited local district, with an incidental benefit to the people of that district through the expenditure of the money among them for labor, etc.

The bill, independently of these objections, cannot become a law, as it appropriates the public moneys for a local purpose, and has not, as required by section 9 of the first article of the Constitution, been passed by the votes of two-thirds of the members elected to each branch of the Legislature."

Senate bill No. 390, entitled "An act in relation to the Wallabout improvement in the city of Brooklyn."

" There have been large expenditures under acts of the Legislature to make certain improvements in and about Wallabout Bay. It appears, by a resolution of the common council of the city of Brooklyn, which became a law on the

5th of May, 1873, that the commissioners appointed to make the improvements referred to had not fully complied with the law. I have tried unsuccessfully to ascertain whether the city authorities desire the additional expenditure provided for by this bill to be made; and in the uncertainty it seems to me advisable that the matter should be reserved for further consideration."

Senate bill No. 183, entitled "An act in relation to filing certain canal claims against the State in the office of the Canal Appraisers."

"The act of 1870 was designed to gather up and dispose of all the claims referred to in this bill. Ample time was given for the purpose, and it was deemed inexpedient and improper again to re-open cases which, through the negligence of the parties, were not presented as required by the law."

Senate bill No. 509, entitled "An act to amend an act entitled 'An act to incorporate the United States Mortgage Company,' passed May 12, 1871."

"This bill authorizes corporations to invest in the bonds of the United States Mortgage Company. Savings banks are corporations and they would therefore be released from the most essential restrictions in regard to their investments."

Senate bill No. 528, entitled "An act to amend chapter 371 of the Laws of 1866, entitled 'An act to extend the operation and effect of the act passed February 17, 1848,' entitled 'An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes, passed April 4, 1866.'"

"This act is rendered unnecessary by the general law passed June 12, 1873, entitled 'An act in relation to the creation and formation of waterworks companies in towns and villages of the State of New York.'"

Senate bill No. 225, entitled "An act further to amend an act passed May 8, 1869, entitled 'An act to incorporate the city of Watertown.'"

"There is a mistake in drafting or engrossing this bill which cannot be corrected. It professes to amend several sections of the original act incorporating the city of Watertown, though no such sections are contained in it.

Senate bill No. 476, entitled "An act to extend the term of office of the Brooklyn Park Commissioners."

"The charter adopted at the late session of the Legislature renders this bill unnecessary."

Senate bill No. 443, entitled "An act to provide for the care of the lands and buildings known as Washington's Headquarters in the city of Newburgh, and the property connected therewith."

"This bill creates a commission to take care of Washington's Headquarters, to appoint a superintendent, secretary and treasurer, to make an annual report of all moneys received by them, and of their expenditures, and to do divers other acts. Such an organization, without an appropriation of money for the purpose of accomplishing the objects of its institution, is entirely unnecessary, and must be, for all practical purposes, nugatory."

Senate bill No. 374, entitled "An act to confirm the resolution of the annual town meeting of the town of Shawangunk, in the county of Ulster, State of New York, fixing the place of holding the annual town meeting of said town."

"The object of this bill may be accomplished under chapter 722 of the Laws of 1873.

Senate bill No. 431, entitled "An act in relation to the Mohawk and Ilion Horse Railroad Company in Herkimer County."

"The objections to the use of the berme bank of the canal for the purposes contemplated are insuperable."

Senate bill No. 44, entitled "An act to amend the several acts in relation to State prisons."

" This bill has two sections amending section 9 of chapter 240 of the Laws of 1854, leaving it uncertain, except by inference, which was intended and is to be accepted as the true amendment. It professes to amend section 7 of chapter 399 of the Laws of 1860, without amending it. If there were no other objections, a bill so clumsily framed is unworthy of a place in the statute book."

Senate bill No. 525, entitled "An act to amend an act passed April 13, 1871, entitled 'An act to amend an act passed May 2, 1864, entitled 'An act to amend an act entitled ' An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes; passed February 17, 1848.' "

" This bill, if it were to become a law, might render valid a mortgage executed while a corporation had no authority to make it. It might also give precedence to a mortgage executed without the assent of two-thirds of the stockholders required by law over a mortgage executed with such assent."

Senate bill No. 288, entitled "An act to amend an act to incorporate the New York and Queens County Bridge Company, for the purpose of constructing and maintaining a bridge over the East river, between the city of New York and the county of Queens, passed June 8, 1872."

" This bill abolishes the provisions regarding time to commence and to complete the bridge, and authorizes work to be commenced after the payment of $20,000 of the subscriptions to the capital stock."

Senate bill No. 488, entitled "An act to legalize the proceedings of the taxpayers of the town of Morristown, and of the county judge of St. Lawrence county, for bonding the town of Morristown to aid in the construction of the Black River and Morristown railroad."

" This bill should have required the railroad company to expend $40,000 in the town of Morristown. There is nothing to show that the bonds may not be disposed of for seventy-five or even fifty per cent, and only three-quarters or half the amount of the debt assumed by the town expended within it."

Senate bill No. 322, entitled "An act to authorize the board of assessors to ascertain and fix the damages for closing streets and roads, and changing the grade or surface level of streets and avenues in the city of New York, and making provisions for the payment of the same."

" It is believed that all the objects of this bill may be accomplished under the powers conferred on the municipal authorities of the city by the late charter, unless it be designed to revive obsolete claims against the city, and in this case it ought not to become a law."

Senate bill No. 529, entitled "An act supplementary to an act entitled 'An act to provide for the incorporation of religious societies,'" passed April 5, 1813, and the several acts amendatory thereof.

" There should be a distinct provision that the corporators should give their assent to the union provided for by this bill before such union should take place."

Senate bill No. 510, entitled "An act to amend article 1 of title 6 of chapter 6 of part 2 of the Revised Statutes, entitled 'Of the public administrator in the city of New York.'"

" The objection to the third section is insuperable. There is no limit to the expenses which might be incurred under the order of the surrogate or a judge."

Senate bill No. 531, entitled "An act to regulate the bureau of the public administrator in the city of New York."

" The board of estimate and apportionment, under the city charter, have the power of fixing salaries and providing for expenditures in the different bureaus. If this bill were to become a law it would be practically an invitation to the heads of other bureaus to apply to the Legislature to make them independent of the city authorities in respect to their compensation and expenses."

Senate bill No. 290, entitled "An act making further appropriations for the enlargement of the Champlain canal."

" This bill does not conform to the requirements of section 13, article 7 of the Constitution of the State. The mistake on the part of the two branches of the Legislature is greatly to be regretted, as it delays the construction of an important public work to the execution of which the sanction of law has been given."

Senate bill No. 524, entitled "An act to protect the rights of tenants and owners of lease land, in leases commonly known as 'Campbell leases.'"

" The parties in whose behalf this bill was framed have a perfect remedy in the courts.

Senate bill No. 314, entitled "An act authorizing the Canal Commissioner to construct a farm bridge over Champlain canal, on farm belonging to Miles Johnson, in the town of Whitehall."

"A similar bill was not approved by my predecessor in office, on the ground that the bridge in question could be constructed, if thought necessary, by the Canal Commissioner in charge of the canal, without a special act."[*]

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[*] See *ante*, p. 154.

Senate bill, not printed, entitled "An act to amend chapter 349 of the Laws of 1873, entitled 'An act to incorporate Machpelah Cemetery Association of Le Roy.'"[18]

"The bill gives the company power to impose fines and penalties to an unlimited amount."

Senate bill No. 422, entitled "An act to incorporate the New York Rapid Transit Company, and to provide a comfortable, safe and speedy system of cheap and rapid transit through the city of New York."

"This bill authorizes the railway to be constructed over a portion of the sidewalks at an elevation of fourteen feet above them, and has other provisions which ought to receive the consent of the common council before the work is undertaken."

Senate bill, not printed, entitled "An act to build a bridge over the Rondout creek at High Falls in the town of Marbletown, in the county of Ulster."

"There is no evidence that this bill was passed with notice to the inhabitants of the town, or that the question of raising money for the purpose indicated has been submitted to them."

Senate bill No. 508, entitled "An act to incorporate the Maritime Association of the port of New York."

"The powers granted to the committee of arbitration seem to me too extensive to be confided to a private corporation, especially in regard to the issuing of attachments to compel the attendance of witnesses. The award of the arbitrators can only be set aside or modified 'for frauds, collusion or corruption of the committee,' and not for partiality, misconduct in refusing to postpone the hearing or to hear evidence, or for exceeding their powers as in arbitrations under the statute. The provisions of the statute seem only to be made applicable so far as they relate to issuing attachments to compel the attendance of witnesses."

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[18] See 1870, note 30, for the statute authorizing the taxation of burial lots, *ante*, p. 184.

Senate bill No. 265, entitled "An act to amend an act entitled 'An act to incorporate the New York Bridge Company, for the purpose of maintaining and constructing a bridge over the East River between the cities of New York and Brooklyn,'" passed April 16, 1867.

"The effect of this bill is to relieve the individual stockholders from the payment of installments unpaid, over and above fifty per cent of their subscriptions, and to authorize the bridge company, with the consent of the mayors and common councils of the cities of New York and Brooklyn, and of the owners, to acquire and pay for all or any of the shares not now held by the said cities, and to refund to the holders all they have paid on such shares, with interest thereon from the date of such payments. With such consent, it would be an absolute release of the private stockholders from their subscriptions, and a reimbursement of their payments. While the cities of New York and Brooklyn are directed to complete and fulfill their subscriptions, the directors are authorized to consolidate the stock held by private subscribers, so as to reduce the amount of their subscriptions from $500,000 to $250,000. In other words, while the bill compels those cities to pay up their subscriptions, it exonerates private subscribers from completing theirs. It is neither just to the taxpayers nor of good example, to permit private individuals, who have engaged in an enterprise promising profitable returns to evade the pecuniary obligations they have assumed and to throw their prospective losses, when the enterprise has become of doubtful benefit, on the taxable property of the communities, of which they are members."

Assembly bill No. 916, entitled "An act reappropriating certain moneys for the Roman Catholic Orphan Asylum of the city of New York."

"The Fifth avenue and the Prince and Mott street institutions were repeatedly requested to comply with the law, by making their report to the Comptroller, in order to obtain the money appropriated to them in 1870. They did not comply with these requests, probably because they were branches of the Roman Catholic Asylum, which received $10,000 under the same act, and therefore could not bring themselves within the requirements of the law to procure the money. The object of this bill is to obtain it for the parent institution, which was so liberally provided for, and thus evade the rule adopted by the Legislature not to make these appropriations from the public treasury."

Assembly bill No. 254, entitled "An act to amend the charter of the village of Dunkirk."

"This bill, while professing to restrict the powers of the trustees to expend money, virtually increases it."

Assembly bill No. 475, entitled "An act to amend the charter of the city of Rochester."

"The bill after its introduction was amended against the wishes of the mover and those he represented, and is believed not to be acceptable to the citizens of Rochester."

Assembly bill No. 360, entitled "An act to provide for the maintenance of certain convicts in the penitentiary at Syracuse."

"This bill, as originally drawn, was prospective; it was amended and made retroactive, thus involving an undefined liability."

Assembly bill No. 548, entitled "An act to incorporate the Merchants' Loan Company."

The third subdivision of section 2 of this bill abrogates the existing provisions of law, by which the public officers of this State are required, under carefully considered regulations, to deposit the public moneys in incorporated banks. The twelfth section allows the company to make loans at usurious rates of interest."

Assembly bill No. 823, entitled "An act to provide for the completion of a swing bridge at East Main street, in the village of Norwich, Chenango county, and for the removal of the present canal bridge on East Main street to Rexford street in said village, and to provide for the expense thereof."

"In violation of the Constitution, which provides (§ 8, art. 7) that every law making a new appropriation continuing or levying an appropriation shall distinctly specify the sum appropriated."

Assembly bill No. 656, entitled "An act to incorporate the Mutual Aid Society of the East German Conference of the Methodist Episcopal Church.

"The object of this bill may be accomplished under the general law; moreover the provision which declares that the society 'shall possess all the powers of any ordinary corporation' is too indefinite to be approved."

Assembly bill No. 721, entitled "An act to provide for the payment of the supervisors of the towns of Busti, Chautauqua, Ellery, Ellicott and Harmony, in the county of Chautauqua, for service under an act passed April 28, 1871, entitled 'An act making an appropriation for the removal of obstructions from Chautauqua lake and outlet.'"

"Same objections as to Assembly bill No. 823."

Assembly bill No. 987, entitled "An act to authorize the religious society in the city of New York, known as the Temple Adas Jeshurun, to buy and hold land for cemetery purposes."

"Has power to make the purchase under the general law."

Assembly bill No. 986, entitled "An act for the relief of the heirs of Charles H. Hall, and their grantees."

Not approved.

Assembly bill, not printed, entitled " An act to incorporate the Allemania Savings Bank of the city of Brooklyn."

" There are already a sufficient number of savings banks in this locality."

Assembly bill No. 719, entitled " An act to prevent extortion by gas companies."

Not approved.

Assembly bill No. 339, entitled " An act to amend an act entitled 'An act for the collection of taxes in the towns of Morrisania and West Farms, in the county of Westchester, passed May 1, 1865; passed May 5, 1870.' "

"As a question of annexation is pending, it is not thought advisable to increase salaries."

Assembly bill No. 896, entitled "An act authorizing the examination, adjudication and payment of the claims of Elisha Bloomer for the use and rent of certain lands occupied by the State for the use of the Sing Sing prison, and for the marble quarried therefrom."

" See objections to Assembly bill No. 823." [Norwich bridge, *ante,* p. 588.]

Assembly bill No. 931, entitled "An act to amend chapter 268 of the Laws of 1859, entitled 'An act to amend the Revised Statutes in relation to laying out public roads, and the alteration thereof, in the towns of North Castle, Bedford and Lewisborough, in the county of Westchester. ' "

" This bill is rendered inexpedient by the passage of a general law at the late session of the Legislature, prescribing for the whole State the provision from which the town of Lewisborough seeks to be exempted."

Assembly bill No. 876, entitled "An act to alter the map or plan of the city of New York, between Fulton and Chamber streets, from City Hall park to South street."

"The charter re-organizing the local government of the city of New York, section 105, gives the mayor, comptroller, commissioner of public works, the president of the department of public parks, and the president of the board of aldermen ample power to lay out, open, widen, straighten, extend, alter and close streets and avenues. There is no necessity for the appointment of such a commission as is provided for by the bill, and no reason for taking the power conferred on it out of the hands of the city authorities."

Assembly bill No. 862, entitled "An act to incorporate the Tyrian Hall Association of East New York, in the town of New Lots, county of Kings and State of New York."

"May incorporate under the general act."

Assembly bill No. 429, entitled "An act to change the grade of Eagle avenue, One Hundred and Fifty-sixth street and John street, in the town of Morrisania, in the county of Westchester."

"The objects of this bill may be accomplished by the town authorities."

Assembly bill No. 1026, entitled "An act to amend an act entitled 'An act to amend and reduce to one act the several acts relating to buildings in the city of New York, passed May 4, 1866; May 17, 1867, and May 6, 1868,' passed April 20, 1871."

"This bill places 'plastic slate' on the same footing as slate and tin, etc., whereas the act proposed to be amended, after enumerating certain materials for covering roofs, etc., leaves other fireproof roofing to the discretion of the superintendent of buildings. By the provisions of this bill such discretion in respect to plastic slate is taken away from him."

Assembly bill No. 1060, entitled "An act to amend the charter of the village of Saratoga Springs."

"An act excluding from burial, even contingently, a person who has not died a natural death, should not be put in the statute book."

Assembly bill No. 649, entitled "An act for the relief of Milton H. St. John, Albert G. Sage, and George Mark."

Not approved.

Assembly bill No. 650, entitled "An act for the relief of Jacob Schaub."

"See objections to Assembly bill No. 823. [Norwich bridge, *ante*, p. 588.]

Assembly bill No. 812, entitled "An act to authorize the towns and villages of the State of New York to furnish pure and wholesome water to the inhabitants thereof."

"The object of this bill is a very proper one; but the powers it confers are not sufficiently guarded. The public officers, to whom the duty of providing for carrying it into execution is intrusted, may adopt plans and incur debt by issuing bonds without submitting either question to the people. The only consent which is required of them is in regard to levying taxes. They should have a larger voice in a matter so deeply affecting their interest."

Assembly bill No. 627, entitled "An act relating to the publication of judicial proceedings and legal notices in New York city and county."

"This bill throws upon the city treasury the expense of making publications which should be paid for by those for whose benefit they are made. It should be left to the courts to designate the newspapers most likely to give notice of legal proceedings to the parties interested."

Assembly bill No. 822, entitled "An act to authorize the Canal Board to adjust the claim and settle with Sidney Seeley, for extraordinary labor performed and materials furnished on the Champlain canal."

Not approved.

Assembly bill No. 791, entitled "An act to authorize the formation of an insurance company in the town of Parma."

Not approved.

Assembly bill No. 780, entitled "An act to incorporate the Tau Chapter of the Delta Kappa Epsilon Fraternity in the village of Clinton, in the county of Oneida, in the State of New York."

"May incorporate under the general law, and hold real estate of the value of $50,000, and personal to the amount of $75,000."

Assembly bill No. 771, entitled "An act to authorize the supervisor of the town of Highland, in the county of Sullivan, to appropriate certain moneys."

"The moneys referred to in this bill were levied by tax to pay certain bonds. They should not be appropriated to any other purpose."

Assembly bill No. 673, entitled "An act to incorporate the St. Patrick's Benevolent Society of Dansville, New York."

"May incorporate under the general act."

Assembly bill No. 689, entitled "An act to amend an act entitled an act to incorporate the village of New Brighton, passed April 26, 1866, and the several acts to amend the same, passed April 22, 1871, and April 27, 1871, and March 27, 1872."

"This is a duplicate of chapter 507 of the Laws of 1873."

Assembly bill No. 539, entitled "An act to amend an act entitled 'An act to extend the powers of boards of supervisors, except in the counties of New York and Kings,'" passed May 11, 1869.

"By the proposed amendment very salutary restrictions on the powers of the supervisors are rescinded."

Assembly bill No. 546, entitled "An act to amend an act entitled 'An act regulating the ferry across the Niagara river at Youngstown, in the county of Niagara,'" passed May 12, 1836.

"The proposed amendment releases the ferry company from the obligation of using boats 'propelled by steam or horse power.'"

Assembly bill No. 573, entitled "An act to amend chapter 279 of the Laws of 1868, entitled 'An act to incorporate the Public Exchange,'" passed April 22, 1868.

"The original act is a questionable one. It may continue to use its privileges and corporate rights without the second section; and I am not willing to give to them a sanction which it has never received from the Governor of the State. The act of incorporation became a law without his approval."

Assembly bill No. 559, entitled "An act to amend an act to incorporate the Port Morris Land and Improvement Company," passed April 19, 1859.

"The charter of the company for whose benefit this bill is intended expires in 1884. It has very large powers,— too large to be further increased in a territory proposed to be annexed to the city of New York. The bill authorizes the company to hold four hundred instead of two hundred acres, and its existence is extended to 1890."

Assembly bill No. 519, entitled "An act to authorize the leasing of certain real estate belonging to the corporation of the city of New York."

"The bill directs the commissioners of the sinking fund to lease the Washington Market for twenty-one years, with covenants for two renewals, placing the property for sixty-three years beyond the control of the municipal authorities of the city, and giving the Washington Market Company the preference as lessees. I consider the bill indefensible on both grounds; 1st, by rendering it impossible for more than half a century to appropriate so large a surface in the most active commercial district of the city to any other purpose should the public interest require it; and 2d, by forbidding the city authorities to grant the lease to any other person or company unless the Washington Market Company shall neglect or refuse to take it. If there were no objection to tying up this valuable property for so long a period of time in a city in rapid growth and with currents of business frequently running into new channels, the proposed disposition of it ought, on every principle of fairness, to be thrown open to the widest competition, and decided in favor of the highest bidder instead of being made in favor of a particular company at an arbitrary valuation. The Legislature has invested the common council of the city under the new charter with full power to provide for the 'construction, repair, care and use of markets,' and the commissioners of the sinking fund with power 'to sell or lease any city property (including markets) for the highest marketable price or rental at public auction or by sealed bids, and always after public advertisement.' The interference of the Legislature is therefore, unnecessary; and certainly the powers so recently conferred on the city authorities ought not to be overruled, even to accomplish an unobjectionable object, without the most urgent necessity."

Assembly bill No. 593, entitled "An act to authorize the formation of a mutual insurance company in the towns of Catskill and Athens, in the county of Greene."

"The risks authorized ($5,000) are greatly in excess of those which other companies of the same character are allowed to take."

Assembly bill No. 517, entitled "An act for the relief of Edward J. Quirk, Isaac D. Colman and Egbert H. Fairchild."

"The contractors have been paid in full under their contract, and have receipted for $69,607.71, in full of the same."

Assembly bill No. 695, entitled "An act to extend the time for the Staten Island and Elizabethport Ferry Company to put their ferry in operation."

"The time has been twice extended and no work has been done."

Assembly bill No. 700, entitled "An act to incorporate the Brooklyn Elevated, Silent, Safety, Railway Company, for the purposes of providing rapid transit through the city of Brooklyn, Kings County, New York, and to provide for construction and operation of a railway therefor."

"This bill authorizes the company to acquire land without the consent of the owner. The exercise of this power by a city railroad may involve an interference with rights of property exceedingly unjust to private individuals, and needs to be limited by the most carefully considered restraints."

Assembly bill No. 652, entitled "An act to amend the charter of the Lutheran Cemetery at Middle village, Queens county, Long Island."

"The bill authorizes persons not belonging to the association to vote by reason of being its creditors."

Assembly bill No. 855, entitled "An act to provide for the payment of the board and expense of keeping persons arrested upon process in civil actions, and confined in the county jail of the counties of New York, Kings and Westchester."

Not approved.

Assembly bill No. 322, entitled "An act to repeal chapter 495 of the Laws of 1855, entitled 'An act to amend an act, passed July 21, 1853, entitled An act to amend an act to provide for the incorporation of companies to construct plank-roads,'" passed May 7, 1847, and the acts amendatory thereof.

Not approved.

Assembly bill No. 759, entitled "An act to amend an act entitled 'An act to extend the distribution of Croton waters, through the city of New York, and to lay the necessary mains to deliver it at higher elevations,'" passed May 7, 1872

"The title of this bill does not express the object in view, and does not in this respect conform to the requirements of the Constitution."[a]

Assembly bill No. 1012, entitled "An act to incorporate the Yorkshire Rural Cemetery Association."

"May incorporate under the general law."

Assembly bill No. 941, entitled "An act to amend an act entitled 'An act in relation to elections in the city and county of New York, and to provide for ascertaining, by proper proofs, the citizens who shall be entitled to the rights of suffrage thereat,'" passed May 14, 1872.

"By the act chapter 675 of the Laws of 1872, section 9, it was provided that the assembly districts should be divided into election districts, and that the numbers and boundaries of the election districts so fixed should not be altered or changed until the city should be districted by assembly districts. No reason is perceived for disturbing or unsettling the arrangement of election districts so recently made under that act.''

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[a] Const. 1846, art. 3, § 16.

Assembly bill No. 889, entitled "An act in relation to and to provide an assessment for regulating, grading and sewering parts of the Tenth avenue and Ninety-third street, in the city of New York."

'' It is represented that under this bill unjust demands of large amounts may be made against the city treasury, and that a particular contract executed in violation of law may be rendered legal and of binding force.''

Assembly bill No. 195, entitled "An act for the improvement of the Ausable river and its branches."

'' The objections to Assembly bill No. 374, which was returned without my signature, on the 26th of May, 1873, are, for the most part, applicable to this bill.* It is wholly local in its character, and provides for an improvement which ought not to be made with money raised by taxation on the whole State.''

Assembly bill No. 41, entitled "An act to provide for the release of the dower interest of married women who are insane or under other disability."

'' There is no provision in this bill to try the question of unsoundness of mind, etc., by a jury.''

Assembly bill No. 646, entitled "An act to authorize the construction and use of a railroad in the city of Brooklyn and town of Flatbush, county of Kings."

'' There are numerous protests against this bill, and a remonstrance from several respectable citizens of the city of Brooklyn, with representations showing the inexpediency of organizing the company authorized by it.''

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* See *ante*, p. 575.

Assembly bill No. 43, entitled " An act making an appropriation to construct a highway from John Peck's, in the town of Johnstown, county of Fulton, to Pine Lake post-office, in the town of Caroga, in the same county."

'' This bill appropriates money from the public treasury to construct a highway in the county of Fulton. It is difficult to conceive an object more strictly local in its character, and on the principle established by the bill, similar appropriations would be justifiable in any part of the State having a sparse population and needing State aid. There can be no justification for such a use of the public money.''

Assembly bill No. 503, entitled "An act to incorporate the Battalion Independent des Gardes Lafayette Francais."

'' This bill is objectionable if intended to create a military organization independent of the military authorities of the State. If intended as a social organization it can be formed under the general law.''

Assembly bill No. 757, entitled "An act relating to the janitors of the police and district courts of the city of New York and their compensation."

'' The claims under this bill are in course of adjudication.''

Assembly bill No. 1000, entitled "An act to incorporate The New York Towage Company."

'' The bill provides that the capital stock shall be paid ' as the by-laws of the corporation shall direct.' It may be paid in notes or in any other mode. While professing to be a towage company, it is authorized ' to build, purchase, have and own, use and transfer any boats or vessels for the transportation of freight or passengers.' These objects may be effected by incorporating under the general law."

Assembly bill, not printed, entitled "An act to amend the act passed May 8, 1846, entitled 'An act to authorize the establishment of the House of Refuge for juvenile delinquents in Western New York, passed April 17, 1861, and to provide for the payment for the care of such delinquents as have been sentenced to Monroe county penitentiary."

"The bill is retroactive and involves undefined liabilities."

Assembly bill No. 301, entitled "An act to provide for the improvement of part of Eighty-sixth street, in the city of New York."

"No reason is perceived why this improvement may not be made, if thought advisable, by the city authorities."

Assembly bill No. 1036, entitled "An act to amend an act entitled 'An act to authorize the business of banking,' passed April 18, 1838, so far as the same relates to the county of Westchester."

"This bill amends the general law by reducing the capital required for banks from $100,000 to $50,000 for the county of Westchester alone. It is altogether inexpedient to exempt a single county from the operation of a rule which has been established for other parts of the State."

Assembly bill No. 373, entitled "An act for the improvement of the Racket river."

"Chapter 90 of the Laws of 1869 established a comprehensive scheme of improvement of the navigation of the Racket river. Commissioners were appointed with power to constitute, establish, and maintain reservoirs by the erection and maintenance of dams, etc., and to assess the cost of construction on the property benefited by the proposed improvement. This bill appropriates $10,000 for clearing and improving the channels of said river, and in constructing dams, slides, piers, booms, and such other erections as should be deemed 'most conducive for the passage of timber and lumber.' It throws upon the State treasury expenditures which, by the act above named, were acknowledged to be purely local, and which were very properly provided for by local assessments. If these expenditures are needed they should be borne by those who are to be benefited by them and not by the people of the State at large."*

Assembly bill No. 505, entitled "An act to provide for the location of a new State prison and for the removal of the present State prison from Sing Sing."

"The object of this bill is clearly set forth by the title, and the preliminary steps are taken for its accomplishment by providing for the appointment of commissioners to make an estimate of the value of the State property at Sing Sing, to select a suitable site for a State prison in any of the counties east of the sixth judicial district, and to ascertain the probable cost of the site so selected. They are also required to estimate the cost of constructing a new prison, and to report their action under the provisions of the bill, to the Legislature in 1874. The State is now engaged in the construction of a new capitol and a number of hospitals and reformatories; the expense of completing them cannot, on a moderate estimate, fall short of $12,000,000; the people of the State are already overburdened with taxation; and I conceive it unjust to them to engage in a new work, which will cost several millions of dollars more; especially one which is called for by no public necessity.

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* See the Grass River improvement veto, *ante*, p. 575.

The site of the Sing Sing prison is convenient of access through steam communication by land and water, and it is within an hour from the city of New York and the schools of crime, in which a large proportion of its inmates are bred. I am not aware that its abandonment has been suggested as the result of any official inquiry; and if there is any reason whatever in favor of changing it for a new prison, the movement is premature, and ought not to be countenanced until other expenditures are out of the way, and the people are in better condition to bear the expense.''

Assembly bill No. 1068, entitled "An act to authorize the construction of a railway from Wall street ferry through certain streets in the city of New York to the North river."

'' The route designated for the railroad authorized to be constructed by this bill crosses Broadway four times in the space included by Duane and Liberty streets, a distance of about half a mile. It is the part of Broadway which is the most obstructed by carriages of all kinds for travel and the transportation of merchandise. The proposed railroad would block up the great thoroughfare for communication between the upper and lower parts of the city, to a still greater extent and add to the delays incident to the existing obstructions in the district, which is the chief point of concentration for the commercial and financial classes. The aim should be to diminish these obstructions and delays, instead of adding to them in the mode proposed by this bill.''

Assembly bill No. 389, entitled "An act regulating the forfeiture of life insurance policies."

'' First. The bill gives the insured thirty days to pay after the premium is due, and virtually deprives the insurer for that period of time of the use of the money to which he is entitled.

Second. It authorizes the payment of premiums to be made by mailing a certified bank check, draft or postoffice money order, thus opening a fruitful source of controversy and misrepresentation, and throwing the whole inconvenience arising from delay or miscarriage on the insurer.

Third. There is no good reason why a particular class of institutions should be singled out for these harsh, and, as I think, unreasonable exactions. If it be said that they are incorporations deriving profitable privileges from the laws, the answer is that banks stand on the same footing, and the latter might, with equal propriety, be required to defer payments for thirty days instead of the three days grace now allowed, and to receive money becoming due to them, by certified checks, etc., sent through the mails. The same observations are equally applicable to fire insurance companies.

Fourth. The bill is an enactment in conflict with the universal and essential rule of commercial and financial punctuality, which may just as easily be adhered to in this case as in the case of any other class of moneyed transactions, and in a community so largely engaged as ours in mercantile business, it should be the aim of legislation, if it interferes at all, to maintain the rule in all cases, instead of relaxing it in any; and finally, matters of this kind may better be left to agreement of the parties, like all other subjects of contract, as the competition between insurance companies of every description, in the extension of their business, will always induce them to make the most favorable terms with their customers."

Senate bill No. 493, entitled "An act authorizing the Common Council of the city of Auburn to purchase or acquire lands for a public cemetery for the use of said city."

"This bill authorizes the common council of the city of Auburn to acquire lands in that city, or in five towns which it designates, in the county of Cayuga, for a public cemetery for the use of said city. The quantity of land is not to exceed one hundred acres, nor the purchase price to exceed $20,000.

If the consent of the owner of the land, required for the purpose, cannot be obtained, or the price cannot be agreed on, provision is made for the appointment of commissioners to determine what compensation shall be made for it. In a word, it confers on the common council the right possessed by railroad companies to acquire land without the consent of the owner. It delegates to the city of Auburn the right of eminent domain — the most arbitrary of all the powers of government — that of taking a man's property from him without his consent, and at a valuation to be made by others. The exercise of this power, as it has been delegated by the Legislature to municipal bodies, and recently to private corporations, is limited to certain specified objects. It should be limited to public objects of absolute necessity; but it must be confessed that the tendency of legislation, in sympathy with the prevailing laxity of interpretation in regard to the true objects of government, has been greatly to enlarge the field for its exercise. It was first confined to cases in which land was required for strictly public use — such as highways, canals and bridges. It was a large and somewhat questionable relaxation of the principle to confer upon private corporations, as in the act authorizing the formation of railroad companies, a right previously restricted to municipal authorities with a view to meet public exigencies. The concession was made in view of the large extent to which railroad companies, though created for private profit, minister to the public convenience. They have also the need, like highways and canals, of following direct or given courses from which, without this right, they might be compelled to diverge at great inconvenience by the churlish or mercenary resistance of landholders. The appropriation of the needful right of way for what comes so nearly up to the standard of a public use, and partakes so largely of the character of a public highway, seemed not unreasonable. The supplying of cities with pure and wholesome water, as intimately connected with the public health, seemed also another proper case for the exercise of the power. When the source of such a supply is found, it must be brought to the place of distribution by the most direct or practicable route, and it cannot well be diverted from its proper course by any but absolutely insurmountable obstacles.

It is not so with cemeteries. If proper ground cannot be procured in one direction from a city, or incorporated village, it may be in some other. In this case, the range of five towns affords so large a field for selection, that it cannot be indispensable to take any man's farm for the purpose against his wishes.

Moreover, the city of Auburn can accomplish its object under chapter 727 of the Laws of 1869, amended by chapter 760 of the Laws of 1870.

The history of this legislation affords a striking illustration of the insidious progress of encroachment upon the rights of individuals. The act of 1869 authorizes the common council of any city, or the board of trustees of any incorporated village owning a burial ground in its corporate capacity, to purchase or acquire lands immediately adjoining for burial purposes, provided such lands are vacant, or have buildings not exceeding $500 in value. The act also provides that, in case the consent of the owner cannot be obtained, the title may be acquired in the manner prescribed for railroad corporations, through the appointment of commissioners to determine its value.

The act of 1870 authorizes common councils and boards of trustees as before, and, in addition, 'any incorporated rural cemetery association,' to acquire lands, when needed for burial purposes, in like manner as railroad corporations; and the restriction as to lands adjoining an existing burial ground is omitted.

The common councils and boards of trustees are authorized to assess the amount paid for the lands and for fencing and improving them by a general tax upon the taxable property of their cities and villages, and they may also borrow the money in anticipation of the tax.

Thus it will be seen that in the first instance the authority to acquire lands for burial grounds, without the owner's consent, was only granted on these conditions: 1. That a city or village should own a burial ground in its corporate capacity; 2. That only lands adjoining such existing burial ground should be acquired; and 3. That only vacant lands or lands having buildings not exceeding $500 in value should be so acquired.

Next the power was conferred: 1. On private corporations; 2. On cities and villages not owning burial grounds; and 3. As a necessary sequence the lands might be acquired anywhere.

By this bill the city of Auburn may acquire land for a cemetery in that city, or in any one of five designated towns, without the consent of the owner, no matter whether it is vacant or what the value of the buildings may be. So extensive a grant of power is warranted by no necessity. With five towns to choose from, there can be no justification for the exercise of a right which cannot be maintained on any other ground than that of a resource to meet public emergencies or minister to urgent public needs.

I consider the act of 1870, so far as it authorizes 'any incorporated rural cemetery association' to acquire land without the owner's consent, as a palpable violation of the Constitution of the State, which only permits land to be thus taken for public use.[b] The act referred to confers the right on a private corporation for the benefit of its shareholders only, taking property from one individual and transferring it to others for their exclusive use. Such a proceeding has been pronounced the very perfection of tyranny; and I am satisfied that the act conferring this right cannot bear the test of a judicial examination.

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[b] Const. 1846, art. 1, § 6.

If the city of Auburn could not, under the acts of the Legislature referred to, accomplish its object, I should nevertheless withhold my assent to this bill. Those acts are, until repealed or pronounced unconstitutional by the competent judicial authority, to be respected by all as the law of the land. But I deem it my right, as a part of the law-making power, to decline to approve any bill which I consider wrong when presented for my signature, even though the principle may be sanctioned by an existing legislative enactment.

Believing, therefore, that the bill confers a power of dangerous tendency as derogating from private rights, which should never be divested without urgent public necessity — a power which ought not to be delegated excepting when indispensable to the public wants — I cannot give it my assent.

It is a striking — I might add a deplorable — illustration of the laxity of legislation in regard to this delicate prerogative of government, that a bill was presented for my signature at the late session of the Legislature, conferring on any mining corporation created under the act authorizing the formation of corporations for manufacturing, mining, mechanical and chemical purposes, the power to take ‘ lands, lakes, ponds, or streams of water ’ without the owner's consent. I gave notice to the member who introduced it that I could not sign it, and it was withdrawn and not subsequently taken up for consideration.

Independently of the objections I have stated, there is another, which it seems to me is well worthy of consideration. The city of Auburn is authorized to go beyond its own limits and take land within the boundaries of other municipal corporations, not only without the consent of the owner, but without the consent of the constituted authorities. Waiving all consideration of the question of power on the part of the Legislature to pass such a bill, I deem it inexpedient and unjust to give any city or town the right to go into another for such a purpose and take from it any portion of its territory. It is the more unjust in this case, as the bill exempts the land proposed to be taken from 'all taxation and from highway or school taxes or assessments,' thus throwing an additional burden on the remaining taxable property."[19]

Assembly bill No. 997, entitled "An act to provide for the adjustment of certain newspaper claims against the city and county of New York."

"The newspaper claims prior to 1872, provided for by this bill, are the remains of the system of 'advertising patronage,' as it was called, organized under the late Tweed administration with a view to subsidize and control the public press. This system was one of the most shameless features of the scheme of public plunder so successfully carried out by Mr. Tweed and his accomplices. In 1870, they paid out of the city treasury more than $800,000 for printing and advertising. A considerable portion of this sum was paid to newspapers without circulation, and without established character, got up in some instances for no other purpose than to share these fraudulent appropriations, made in violation of law and with full knowledge that they were so made. In 1872 the expenditure for these objects was reduced under Mr. Green, the present comptroller, to $145,550.10. In 1871, before he took office, over $800,000 had been paid, and claims to the amount of more than $2,000,000 more were presented to him.

The claims covered by this bill, and not finally adjusted, are understood to amount to over $800,000. It is not intended to intimate that they are all fraudulent or dishonest; but that they are, for the most part, exorbitant or unauthorized, there can be no doubt.

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[19] The act of 1873, chapter 452, which conferred on rural cemetery associations power to acquire land by condemnation, was held unconstitutional in this respect in Re Deansville Cemetery Association (1876). 66 N. Y. 569.

By chapter 375 of the Laws of 1872, which provided for the examination and audit of these claims, they were brought before the board designated for the purpose of adjusting them. I learn from the comptroller that test cases were made in the courts by the claimants in several instances, and that on a presentation of the facts by his department they invariably failed; that in other instances the claims were withdrawn from the control of the Board, so far as the claimants could do so, from the hopelessness of obtaining any allowance, with a view to prevent action until the opening of the session of the Legislature, and then to procure relief through some new process of adjustment by which the courts and the Board of Audit might be overruled in their determinations.

This bill is the fruit of the efforts made by those, who hold these unadjusted claims. The Board of Apportionment and Audit is revived and continued for the purpose of adjusting them, and three commissioners are authorized to be appointed, to whom an appeal is granted from any final decision by said Board made heretofore or to be hereafter made.

The commissioners, instead of being left to the free exercise of their own judgment, are tied up by the most extraordinary restrictions. They are not to decline to allow any such claim because of any defective or insufficient authority directing the performance of the work, for which such claim was presented, provided it was directed to be performed by some board, bureau, committee or 'office' (so in the bill) of the city or county government; and the ordering was within the reasonable exercise of the powers of such government; and provided the party performing the work did it in good faith, and had reasonable cause to believe, and did believe, that such work had been actually authorized to be done by some proper authority.

Thus, if some board, bureau or committee, without a shadow of authority, directed certain advertising to be done, and it were within the reasonable exercise of the powers of the city or county government that it should be ordered, and the claimant should say he believed (for there is no other mode of ascertaining his belief), that he was doing it by some proper authority, the commissioners would be compelled to allow the claim, even though they knew it to be unauthorized. The bill virtually says to the commissioners: If the city or county government has power to order advertising, and may reasonably order it, and any bureau or committee, without any authority whatever, has ordered it, you must allow the claim for it, and throw the expenditure upon the taxpayers of the city, even though you are confident that it was incurred for the purpose of subsidizing the press by the corrupt coalition, by which they have already been so grossly defrauded and plundered.

The word ' office ' in the bill was manifestly intended for officer. Thus, if the bill had been engrossed as its authors intended, and it had become a law, and any member of the city government, Mr. Tweed for example, had ordered any portion of this advertising, the commissioners under the restrictions with which their authority is hedged in, would have been compelled to allow the claim. The claimants are intelligent men, and they must, in many cases, have known that there was no authority to order the work they were performing, and that it would only be paid for through the influence of some member of the Tweed coalition, and by means of a gross fraud on the taxpayers of the city. Where the work was solicited, as it doubtless was in most cases, they should have foreseen that if the corrupt municipal administration ordering it were overthrown, a reform government would ignore it, and they should have gone into the enterprise, with a willingness to accept the loss, like that resulting from any other hazardous speculation.

The effect of the bill would be to revive and reopen a large number of fraudulent or exorbitant claims, which have already been before the courts or before the Board of Audit under chapter 375 of the Laws of 1872, and upon which the action of the Board was prevented by the claimants themselves.

It is not intimated, as already stated, that some of these claims may not have reasonable ground for a hearing; and if the bill had provided for the revival and continuance of the Board of Apportionment and Audit in order to consider them, as it was empowered to consider other claims on the city treasury, I should cheerfully have given it my approval. But this bill not only takes these cases out of the ordinary course of official or judicial examination and adjustment, by creating an extraordinary board of appeal and arbitration, but it places the latter under restrictions, which might be very unjust to the city by giving validity to fraudulent demands against it. These restrictions would operate solely for the benefit of dishonest claimants; no honest one needs them.

The bill is not only objectionable on account of these old claims, but because it embraces all claims of the same nature, prior to the first of May, 1873, reviving the Board of Apportionment and Audit for the purpose of disposing of them and making its awards subject to appeal to the commissioners. It applies the same process of adjustment to claims for work done under the reform government as to those which arose under the faithless and unscrupulous administration which preceded it. Advertising under the former can be paid for, like all other work ordered by it, by the proper accounting officers; and there is no reason why it should be exempt from the ordinary rules of examination and settlement.

I regard this extraordinary mode of overruling, and subjecting to an external supervision and control, the action of the municipal authorities of the city of New York as unjust to them and its citizens. The interference of the Legislature between a municipal government and those it employs to do its work can never be justified except by the most urgent necessity, or when the authorities constituted by its charter are without the requisite power. There is no reason why the Legislature, on the principle established by this bill, should not interpose in every incorporated city and village in the State, whenever a person employed by the municipal authorities is dissatisfied with his compensation. The courts are always open to claimants, who ought to be left to their remedies before the appropriate tribunals, instead of being countenanced in resorting to the Legislature and inducing it to assume, as it does by this bill, the exercise of judicial powers."

Assembly bill No. 819, entitled "An act in relation to mortgages on lands under water, in the city of New York."

"The claims proposed to be adjusted by this bill are founded upon a change in the pier or bulkhead line on the Hudson river, diminishing the distance to which the grants under water extend out from the shore. The chief value of these grants depends on the extent of the frontage, and not so much on their projection into the water from high-water mark. Where a change in the pier or bulkhead line has been made, it is by bringing it in nearer to the shore, diminishing the area of the grants at the greatest depths of water. As the filling in is more expensive there, the diminution of the value of the grant is not so great as it would be if the area were curtailed nearer the shore in shallower water, where the cost of filling is less expensive. The rule of compensation therefore, if any compensation whatever is due, is unjust to the city, as it assumes all parts of the grant to be equally valuable, and fixes the deduction to be made from the original consideration at the same relative proportion as the diminution of the area bears to the quantity of land originally granted.

I am advised that the price at which these grants were made, was fixed by the city at a rate per lineal foot fronting upon the river, and had no reference to their extension into the water. If this be so, the obvious question arises, whether any compensation is due for diminishing an area, for which no consideration has been paid. At all events it is one, which ought not to be settled in the summary manner provided for by this bill, without reference to the city authorities.

If there is any just ground for the claim, the important question arises whether it should be satisfied at the expense of the city or the State. The first alteration in the pier or bulkhead line, after it was originally established, was made in 1855 by commissioners appointed by the State; and it was expressly designed to promote the interests of commerce, and to benefit the navigation of the Hudson river by narrowing the field for encroachment upon it. By this alteration a new line nearer the shore was established, and it is on this curtailment of the area comprised in previous grants of land under water to individuals that the claim is founded. This is, in fact, the only ground for such a claim, for the only subsequent alteration was made by the Central Park Commissioners by establishing a line farther out, and its effect was to restore a portion of the land under water, which was curtailed by the line fixed by the Harbor Commissioners in 1855. It will be perceived, therefore, that there are equities on the part of the city, which are to be considered. Indeed the whole question is a complex one; and it is extremely doubtful whether it can be properly settled, if the claim is persevered in, except by the courts."

1874. JANUARY 6. LEGISLATURE, NINETY-SEVENTH SESSION.

JOHN A. DIX, Governor.

ANNUAL MESSAGE.

Executive Chamber,
Albany, *January* 6, 1874.

To the Legislature.— At the close of another year of uninterrupted health, prosperity, abundance and peace, the fervent expression of our thankfulness is due to Almighty God for these signal manifestations of His favor. While in portions of our sister states a destructive pestilence has desolated hundreds of households, our own have been mercifully spared. Though the friendly relations of the United States with a European power were for a time endangered by an infringement of our international rights, the peril has been happily averted by a combination of firmness and forbearance, which always becomes a powerful government; and there is ground for hope that the ancient nation, which, with a less prudent bearing on our part, might now have been at war with us, may occupy, on the other side of the Atlantic, sustained by our sympathy and kind offices, the same position, which we hold in the western hemisphere, as a representative of free institutions.

It would be a source of heartfelt satisfaction to us if we could say unreservedly that we had responded to this exemption from domestic and national evils by a more devoted discharge of our social duties, a more cheerful submission to the laws, and a more studious fulfillment of our obligations to the public and to each other. In all these respects I fear a review of the past will disclose much which will need your most thoughtful deliberation, with a view to provide such remedies as may be within your constitutional powers.

The condition of the state is, nevertheless, under most of its aspects, exceedingly gratifying. Our debt is comparatively small; it may, with proper economy, within a few years be entirely paid; and in that case we shall stand in marked and commendable contrast with other states and municipalities, which are heavily burdened with pecuniary liabilities. Our colleges, academies and schools are flourishing, our charitable institutions in general well managed, our laws enforced with renewed vigor, and great criminals brought to speedy and exemplary punishment. The reports of the officers in charge of the different departments of the government will present to you in full the details, of which I proceed to give a summary.

RECEIPTS AND EXPENDITURES.

The receipts into and payments from the treasury, on account of all the funds, except the canal and free school funds, for the fiscal year ending September 30th, 1873, were as follows:

Receipts	$16,803,188.24
Payments	14,371,737.63
Balance in the treasury, September 30th, 1873	$2,431,450.61

No deduction from this amount has been made on account of the defalcation in the state treasury, subsequently discovered.

STATE DEBT.

The following statement shows the amount of the state debt on the 30th September, 1873, after deducting the unapplied balances of the sinking funds at that date.

	Debt September 30, 1873.	Balance of sinking funds September 30, 1873.	Balance of debt after applying sinking funds.
General fund	$3,988,526 40	$4,244,400 39	....
Contingent	68,000 00	30,187 21	$37,812 79
Canal	11,352,880 00	1,530,241 21	9,822,638 79
Bounty	21,121,000 00	9,790,072 24	11,330,927 76
	$36,530,406 40	$15,594,901 05	$21,191,379 34

The general fund debt sinking fund includes $1,500,000, received since the close of the fiscal year, and from the bounty debt sinking fund, the interest accrued to October 1st, 1873, payable January 1st, 1874, has been deducted.

The entire funded debt of the state on the 30th September, 1872, after deducting unapplied balances of sinking funds, amounted to.	$25,386,725.84
On the 30th September, 1873, the entire funded debt of the state, after a like deduction, amounted to.	21,191,379.34
Showing a reduction of the debt of.	$4,195,346.50

This reduction of the state debt is apparent only — not real, as the redemptions of stock, which fell due in the year 1873, were provided for by new loans. The stock outstanding on the 30th September, 1873, and to be hereafter redeemed, is, therefore, only a few hundred thousand dollars less than on the 30th September, 1872.

REDEMPTION OF THE STATE DEBT.

The following amounts of the canal state debt fell due in 1873:

January 1st.	$847,500.00
July 1st.	2,328,000.00
November 1st.	1,974,600.00
	$5,150,100.00

Provision was made for the redemption of this portion of the state debt by deficiency loans, under section 3, article 7 of the constitution.

TAXES.

The state tax levy for the current year amounted to 6$\frac{95}{100}$ mills. The total amount of the tax will be $14,800,903.38—about five millions less than the amount levied during the preceding fiscal year.

SALT SPRINGS.

The quantity of salt from the Onondaga Salt Springs, inspected during the last fiscal year, was 7,959,172 bushels — less by 40,627 bushels than the production of the preceding year. The net revenue from this source was $21,765.75, showing a falling off as compared with the preceding year of $12,856.37.

STATE PRISONS.

The following statement shows the expenditures and earnings of each of the prisons for the year ending September 30th, 1873:

	Advances from the treasury.	Received from earnings.	Excess of expenditures.
Auburn	$213,178 72	$128,214 78	$84,963 94
Clinton	331,480 66	129,095 61	202,385 05
Sing Sing	372,856 74	96,886 68	275,970 06
Miscellaneous expenditures not distributed, including $20,066.71 for transportation of convicts	....	....	33;970 01
	$917,516 12	$354,197 07	$597,289 06

The Clinton Prison report shows items of stock on hand, and unpaid accounts for the last fiscal year, amounting to $153,043.42, and that of Sing Sing $31,000.38 of unpaid accounts.

These items and accounts are a virtual reduction of the foregoing deficiency. It is believed that the present fiscal year will show a further reduction, as two of the prisons were turned over to the present wardens almost wholly destitute of supplies of all kinds.

COMMON SCHOOLS.[1]

The following statement shows the condition of the public schools and the operation of the common school system for the year ending September 30, 1873:

Total receipts, including balance on hand September 30, 1872	$12,089,168.98
Total expenditures for the year	10,946,230.82
Amount paid for teachers' wages	7,417,179.59
Amount paid for school houses, repairs, furniture, etc.	1,991,932.32
Estimated value of school houses and sites	27,070,310.00

Total number of school houses	11,735
Number of school districts (exclusive of cities)	11,325
Number of teachers employed at the same time for the full legal term of school	18,268
Number of teachers employed during any portion of the year	29,491
Number of children attending the public schools	1,030,360
Number of pupils attending the normal schools	6,535
Number of children of school age attending private schools	130,096

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[1] Chapter 421, approved May 11, "to secure to children the benefits of elementary education" initiated the policy of compulsory education, by requiring parents to instruct their children, between eight and fourteen years of age, in spelling, reading, writing, English grammar, geography and arithmetic, or send them to a public or private day school, at least fourteen weeks in each year. The act also prohibited the labor of children in manufacturing establishments unless they had received the required instruction. The act also imposed penalties for its violation, and prescribed details of administration. The Constitution of 1894, article 9, section 1, requires the Legislature to maintain a system of free common schools wherein all the children of the State may be educated.

Number of volumes in school district libraries	858,315
Number of persons in the state between the ages of 5 and 21 years	1,545,260

COLLEGES AND ACADEMIES.

From the reports of the regents of the university, which will be made to you, it will be seen that the condition of the colleges and academies is, in all respects, satisfactory. In the former the course of instruction is constantly adapting itself to the requirements of the age. While disciplinary and classical studies have never been more thoroughly pursued, subjects which are regarded as more closely related to the practical affairs of life, are receiving increased attention. The number of students during the past year was very considerably in excess of that of the preceding. In all that gives character and power to this class of institutions, the colleges of New York will compare favorably with those of any other state.

The number of colleges in the state is as follows: literary, 22; medical, 13; law schools, 5.

In the academies a system of examinations instituted by the regents several years since, greatly reduced the number of scholars on which the distribution of the public moneys appropriated to these institutions is made. The reports of the last year show an increase in the number of such scholars of nearly twenty per cent over the previous year; an increase most gratifying, because it exhibits the salutary influence of higher requirements in scholarship. The regents are confident that this influence will continue to strengthen and extend, making itself very sensibly felt in the common schools as well as in the academies. The increased appropriations lately made to these institutions are greatly stimulating the work of both teachers and scholars in all departments of instruction. They are specially felt in the classes for the preparation of teachers of the common schools, there being an increase of at least thirty per cent. in the number of such teachers now under training, as compared with former years.

This result is regarded by the regents as most encouraging; for with all that is done in the normal schools, the academies must continue to a great extent to furnish the teachers for the common schools, especially in the rural districts. Whatever is done to elevate and improve the institutions, in which these teachers are trained, will tend directly and positively to advance the schools in which they teach.

The range of subjects taught in the academies is wide, and in the character of the instruction and the apparatus provided for the illustration of science, many of these institutions are fully equal to the colleges of a few years ago.

The number of academies and academical departments of union schools under the visitation of the regents is 210.

STATE LIBRARY.

The state library, both in its general and its law departments, has been augmented to the full extent of the means at the disposal of the trustees. More than twenty-eight hundred volumes have been added to it during the past year. The annual appropriation, not increased for many years, is quite inadequate to its wants, especially in view of the largely increased cost of books. It is believed to be worthy of continued and enlarged support. The whole number of volumes on its shelves is 90,844.

The state museum of natural history under the management of Professor Hall, is in an excellent condition, and most valuable contributions are made through it to the departments of science, which it illustrates.

MILITIA.

The National Guard consists of eight divisions and 20 brigades, distributed as follows, viz: one regiment, one battalion and nine separate troops of cavalry; 12 batteries of artillery, 31 regiments, 12 battalions and three detached companies of infantry, making an aggregate force of 23,360.

During the last year two regiments of infantry have been disbanded and mustered out of service, six regiments of infantry have been reduced to battalions, and one regiment has been re-organized.

During the same period six arsenals, which had become entirely useless, have been sold, producing $25,550, of which $22,850 have been paid into the treasury, and $2,700 refunded to the village of Dunkirk and the city of Ogdensburg, from which the sites of two of the buildings were obtained.

At the commencement of my administration I found that no system of proper accountability for arms, ammunition, and munitions of war existed. There were no reliable inventories of the property contained in the arsenals, and therefore no means of ascertaining from time to time whether it was faithfully preserved. This radical defect has been remedied. Complete inventories of the contents of all the arsenals have been prepared, the commissary general of ordnance has been made responsible for them, and whenever a change takes place hereafter in the incumbent, the successor will be required to receipt for them. The same system of accountability is applied to the commanders of regiments who are required to give bonds for the safe keeping of the arms and other property in their charge. In the progress of the inquiries set on foot to ascertain where such property was to be found, large quantities of arms and munitions were discovered outside of arsenals and of military organizations, amounting to over $9,000 in value. Unserviceable property to the amount of $7,283.90 has been sold, and about the same amount is on hand for sale. The force in the arsenals has been reduced by the discharge of superfluous employés, and a saving of $5,616.44 per annum has been effected. The accomplishment of these reforms has been most efficiently carried out by the adjutant general aided by the commissary general of ordnance.

A system of thorough inspection has been introduced with very beneficial results by the inspector general, and the National Guard is believed to be better organized, disciplined and prepared for active service than it has been at any previous time.[2]

On the 9th of January last the sum of $192,650.31 was received from the federal government on account of the war claims of the state, and on the 19th March, a further sum of $107,498.08, in all $300,148.39. The account presented by the state shows a balance of $1,209,286.11 still due. This amount includes $131,188.02 on account of interest on comptroller's bonds, which cannot be paid without an act of Congress, and also an installment not yet examined of $341,580.10. The remainder, $736,507.99, is made up of disallowed and suspended items of which probably not more than a third will be obtained.

TRUST COMPANIES.

Some legislation is desirable for the regulation of that class of moneyed corporations known as trust, loan and indemnity, guarantee, and safe deposit companies.

Banks of discount and deposit and savings banks have a general system by which each class is regulated, and no reason is perceived why the corporations referred to should not be placed under a similar system, the provisions of which shall be uniform. The last-named institutions have, as a general rule, greater powers than the former, under less restriction, with no uniform external supervision, and with equal liability to hazardous risks and ultimate loss. Your consideration is respectfully called to the propriety of passing a general law applicable to all institutions of this class now in operation and requiring any which may be hereafter created to conform to it.

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[2] Chapter 268, passed April 27, created the office of inspector of rifle practice, who was to be appointed by the Governor with the rank of colonel. He was given general supervision of rifle practice at all the armories and rifle ranges.

The New York Loan and Indemnity Company, in the published announcement of its powers and purposes, makes the fact conspicuous that it is " fully prepared to carry on a general banking business." It is not doubted that others are engaged in the same transactions, and yet they are, to a great extent, free from the operation of those laws, to which it is the policy of the state to subject other moneyed institutions as custodians of the funds of the citizens of the state in order to protect the people from loss through mismanagement and fraud. The demand for these charters seems to be increasing, while our legislation, in regard to them, is inharmonious with itself and with the principles which have been deemed sound in respect to institutions of this character. One company is under the supervision of the state comptroller, another, in a certain sense, of the bank superintendent, while a third is the ward of the supreme court. These anomalies should be corrected by the adoption of a uniform system of accountability.[3]

BANKS.

On the first day of October last, eighty banks were doing business under the laws of the state.

During the fiscal year, circulating notes to the amount of $20,972 were destroyed by the bank department. One hundred and fifteen banks were credited with lost circulation to the amount, in all, of $480,913, the time for redeeming the same, after the usual legal notice, having expired.

The amount of circulation outstanding, including that of incorporated banks, banking associations and individual bankers, was, on the first of October last, $1,400,116.50. Of this amount, the sum of $656,240 was secured by deposits of cash, stocks, or stocks and mortgages. The residue, being circulation issued prior to the passage of the general banking law, is not secured by any deposit in the bank department.

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[3] Chapter 324, approved May 5, required moneyed corporations other than banks, institutions for savings and insurance companies, to make semi-annual reports to the superintendent of the banking department, and these institutions were made subject to the superintendent's visitation.

There were forty-one banks incorporated prior to the enactment of the general banking law, that had not, on the 22d of May last, the date of an act to provide for their final closing, taken any steps toward such closing. Twelve of these have since given notice of final closing under the provisions of that act.

During the fiscal year one bank discontinued business, and thirteen were organized, eleven of which commenced business. Six of these latter were changed from banks organized under the national banking laws.

SAVINGS BANKS.

There were on the 1st of July last, 152 savings banks reporting to the bank department (three of which are closing), with assets aggregating $314,755,770.

The increase in assets during the six months ended July 1, 1873, amounted to $9,425,439. The number of persons having deposits in these institutions, was, according to the number of open accounts on the 1st day of January, 1873, 822,642, being an increase of 45,942 deposits during the year then ended.

In my annual message in January last, it was recommended that a general law should be passed defining the powers of savings banks and repealing all special privileges in existing charters inconsistent with it. It was also suggested that the amount which any one individual should be allowed to deposit, should be limited. These suggestions are renewed with the further recommendation that these institutions should not be allowed to pay more than five per cent. interest on deposits. These deposits exceed $300,000,000, and the interests involved are so serious that the subject is one of the most important that can engage the attention of the legislature. The primary consideration is safety, and this can only be secured by the very best investments and by a moderate rate of interest to depositors. Five per cent. is believed to be the maximum which these institutions can afford to pay, if sound rules are applied to their transactions.[4]

It is also recommended that no director or officer of a savings bank shall be a director or officer of any bank of discount in which its moneys are deposited. Institutions of both classes are in some instances under the same management, and there is always danger that moneys which are deposited with the former, and required to be invested in permanent securities, may enter into the ordinary business of the latter and be loaned out on discounted notes in violation of the requirements of the law. The former are established for the benefit of persons in moderate circumstances, and every possible precaution should be taken to secure the accomplishment of the object of their creation.

INSURANCE DEPARTMENT.

The number of insurance companies subject to the supervision of the insurance department was, on the 31st day of December, 1873, 271, as follows:

New York joint stock fire insurance companies....	99
New York mutual insurance companies...........	7
New York marine insurance companies...........	9
New York life insurance companies................	28
Fire insurance companies of other states..........	83

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[4] See 1873, note 2, for statutes limiting individual deposits in savings banks, *ante*, p. 530.

Life insurance companies of other states	28
Casualty insurance companies of other states	3
Foreign insurance companies	14
Total	271

The total amount of stocks and mortgages held by the department for the protection of policyholders of life and casualty insurance companies of this state and of foreign insurance companies doing business within it, was $9,480,046, as follows:

For protection of policyholders, generally in life insurance companies of this state	$3,715,199
For protection of registered policyholders exclusively	3,033,847
For protection of casualty policyholders exclusively	1,000
For protection of fire policyholders in insurance companies of other states	30,000
For protection of fire policyholders in foreign insurance companies	2,397,000
For protection of life policyholders in foreign insurance companies	303,000
Total deposit	$9,480,046

QUARANTINE.

During the year, eighty-three vessels have been detained in quarantine on account of sickness which had occurred on board while in port or on their passage to New York.

On twenty-five vessels thirty-two cases of small-pox occurred, exposing to the infection in a greater or less degree 14,795 persons who were on board. Thirty-seven vessels had yellow fever on board, and sixty-two cases of this disease, of which thirteen were fatal, were received and treated in Dix Island Hospital. Seventeen vessels arrived in which ship-fever had occurred at the time of arrival. From these, seventeen persons were removed to hospital with fever, the number exposed to the disease being 12,024. Four vessels arrived on which there were seventeen cases of cholera, of which nine were sent to hospital and one was fatal after arrival. On these vessels were 2,872 persons. During the quarantine season 1,391 vessels arrived and were examined from ports suspected or known to be infected with yellow fever, and one hundred and ninety were detained for observation; of these one hundred and twelve were required to discharge the whole or a part of their cargoes before being permitted to pass quarantine. These vessels were from Havana, Sagua la Grande, Matanzas, New Orleans, and one from Rio Janeiro. The business operations pertaining to these discharges of cargo were, as last year, left in the hands of owners subject to necessary sanitary control. Although then an experiment, the success of this system for two years, and especially during the last summer, proves it to be practicable and safe. The malignant type of yellow fever of the past season and the epidemic cholera from northern Europe, none of which reached the city through quarantine, have shown that the system can safely be followed in the future. Twenty-two licenses to work in quarantine have been issued during the season, to the various firms of lightermen, stevedores, coopers and cleaners who have applied for them, thus relieving the great hardship so much complained of by merchants and shippers previously to the administration of quarantine by the present health officer; and business operations are now, for the first time, left in the management of those on whom it devolves to pay the expenses incident to them. Although during the past summer there has been an unusually large number of vessels lightened for sanitary reasons, there is under the present system no complaint, and it is a matter of congratulation, that after so many years of unseemly contention between the citizens of New York and the health authorities of the port, necessary sanitary restrictions are now enforced with the consent and approval of the commercial classes.

BOARD OF HEALTH OF THE CITY OF NEW YORK.

In order to carry out the measures necessary for the preservation of the public health in the city of New York, it is indispensable that the authority of the board of health should be extended over the waters of the harbor and bay within the quarantine limits. The health officer of the port is a member of the board, and should be empowered to execute its orders upon the waters surrounding the city in the same manner as the police carry its directions into effect upon the land. He has a steamer at his command and may do so without any additional expense to the state. When the bodies of dead animals and other nuisances have been removed beyond the city limits, they are often left floating in full view, upon the waters of the harbor, or land upon the shores of the lower bay, and are not only a source of annoyance, but quite as dangerous as other evils, which the organization of the board of health was designed to prevent and remove.

Your interposition may also be needed to supply some defects and omissions in regard to the powers and duties of the board, in the act passed at the last session of the legislature for reorganizing the city government.[5]

EMIGRATION.

The number of emigrants from foreign countries, who arrived at New York during the year 1872, was 294,581. The number in 1873 was 266,010; a falling off of 28,571.

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[5] Chapter 636, approved June 15, enacted general provisions relating "to the board of health of the health department of the city of New York; to the commissioners of health, and the officers of the said department, their duties and powers, and the expenses of said department."

The commissioners state that, in consequence of the prevailing stagnation in business, a much larger number has been thrown upon them for support, and that without an increase of the head money they cannot pay the necessary expenses of their establishments. I believe they have made every possible effort to bring these expenditures within their means, and the statements which will be laid before you, are respectfully commended to your favorable consideration.

INSANE.

Statement showing the number and situation of the insane of the state on the 1st of January, 1872, according to reports on file in the office of the State Board of Charities:

	Male.	Female.	Total.
In the custody of friends	762	820	1,582
In the state institutions	439	654	1,093
In private institutions	121	191	312
In city asylums and city almshouses	841	1,392	2,233
In county asylums and county poorhouses	588	731	1,319
In institutions of other states	86	75	161
In the asylum for insane criminals, Auburn	70	5	75
Total	2,907	3,868	6,775

The information relating to insane in the "custody of friends" was obtained from physicians in the various cities and towns. The officers of the various public and private institutions furnished the information relating to this class in their respective charge.

The board are now engaged in collecting information in regard to pauper and destitute children as provided by section 7 of chapter 571 of the Laws of 1873. Returns have been received from nearly all the institutions by which they are supported, and the results will be presented to you in tabular form.[6]

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[6] A revision of the statutes relating to the custody, care and treatment of the insane was contained in chapter 446, approved May 12, which also created the office of commissioner in lunacy. The act included numerous and comprehensive provisions relative to the administration of the department.

STATE PARKS.

Near the close of the last session of the legislature, the commissioners of state parks made their first annual report, in conformity to a direction "to inquire into the expediency of providing for vesting in the state the title to the timbered regions lying within the counties of Lewis, Essex, Clinton, Franklin, St. Lawrence, Herkimer and Hamilton, and converting the same into a public park."

Their report contains important views and suggestions in regard to the preservation of the forests in this mountainous district for the supply of water and timber.

They came to no conclusion in regard to the main object of their inquiry, but recommend, until the question can be further considered and decided, that the wild lands now owned and held by the state be retained.

SINKING FUNDS.

In my annual message to the Legislature in January last, allusion was made to the duty of preserving inviolate the sinking funds pledged for the payment of the interest and the redemption of the principal of the state debts. By the Constitution of the State these funds are required to be "sacredly applied" to that purpose.[a] Any diversion of the moneys belonging to them to other purposes is a clear violation of this requirement and an act of bad faith to the public creditors, who have made loans to the state on the pledge of these funds for their re-payment. Yet the legis-

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In 1889, (chapter 283) a State commission in lunacy was created, to be composed of three members appointed by the Governor and Senate, and to hold office six years. The statute prescribed the powers and duties of the commission and repealed inconsistent laws. The Constitution of 1894, article 8, section 11, required the Legislature to provide for a State commission in lunacy.

In 1896, there was a general revision of the statutes relating to this subject, which was contained in the insanity law, chapter 545. This continued the State commission composed of three persons, with numerous additional and enlarged provisions relative to administration.

[a] Const. 1846, art. 7, §§ 1, 2, 3, am. 1854, and §12.

lature in past years has authorized the application of these moneys to the expenses of the government; and on the 30th of September, 1872, the greater part of the $11,000,000 then belonging to the general, contingent, canal and bounty fund sinking funds had been used for other purposes. The comptroller has taken measures to redress this violation of the faith of the state, by investing these funds in permanent securities. On the 30th September, 1872, the whole amount so invested was only $871,244.09. The amount on the 30th September, 1873, was $2,328,903.65, and a further addition of about $900,000 has since been made. The residue of the moneys belonging to these funds will be invested in like manner, as rapidly as the receipts into the treasury, applicable to the purpose, are realized. It is now represented by deficiencies, bank deposits and unpaid taxes.

PAYMENT OF STATE TAXES.

By chapter 760 of the laws of 1873,[b] it was provided that every county should "pay its quota of state taxes into the state treasury, the one-half on or before the fifteenth day of April, and the other half on or before the first day of May, in each and every year thereafter."

The object of this provision was to secure to the state the payment of the taxes raised in the several counties in time to meet appropriations made by the legislature for the expenses of government. This requirement is not obeyed. In a number of counties the treasurers during the last year retained over $100,000 each for several months after the last day appointed for paying it into the state treasury, having loaned it to the banks in their neighborhood at interest, thus using the public money, in flagrant violation of law, for their own pecuniary benefit. Indeed, it is a common practice on the part of county treasurers to loan at interest, after the time fixed for paying it to the state, moneys collected from the taxpayers, thus making a profit out of a breach of their trust. The money thus collected is the property of the state from the day the law requires it to be paid into the treasury; and the retention of it beyond that day by a treasurer, is not only a virtual conversion of public money to his own use, and in that respect a gross official abuse in fraud of the law, but it is a great inconvenience to the state treasury by withholding the means of satisfying legal demands against it, and an injustice to parties whose claims the legislature has provided for, by postponing the payments to which they are entitled.

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[b] This act was sustained in State v. Kings Co. (1891), 125 N. Y. 312.

This abuse should be remedied by a legislative act. It is a greater offence than many others which are declared to be misdemeanors, and there is quite as much reason that it should be punished by fine and imprisonment. The counties have a deep interest as well as the state in having their taxes promptly paid over after collection, as the chance of defalcation on the part of their treasurers is always increased when the public moneys in the hands of the latter are used, even temporarily, for private profit. Besides, it is very unjust and a great hardship to the taxpayers to compel them to pay promptly, and then to allow the money collected from them to be used by the county treasurers and the banks for their own benefit for months after the time the law requires it to be paid over to the state. It is still more unjust to them when it is considered that for want of the moneys thus withheld the comptroller is sometimes obliged to borrow at 7 per cent. interest to meet the current expenses of the government, and the interest thus paid becomes a new burden on the taxpayers.

When these moneys are loaned to the banks, the latter loan them to their customers; and when the comptroller calls for their payment, months after the time fixed for the purpose, it is not an uncommon occurrence for the defaulting treasurers and the banks, which are parties to their delinquency, to beset him with pressing letters urging him to grant them further time to pay over public moneys withheld from the treasury in fraud of the law. The taxes in a majority of the counties are promptly paid over; the same punctuality should be exacted from all; and if the law is not voluntarily obeyed, its execution should be enforced by suitable penalties. A conformity to it would, no doubt, be aided by making it the imperative duty of the comptroller to charge ten per cent. interest on all moneys received by county treasurers from taxes for state purposes and withheld by them after the day fixed for payment into the state treasury.[7]

DEFALCTION IN THE STATE TREASURY.

It is my painful duty to call your attention to a defalcation in the office of the state treasurer by a fraudulent abstraction of the public moneys to the amount of $304,957.91 by Charles H. Phelps, one of the clerks in the office, to whom the chief management of its affairs seems to have been confided, under the title of cashier. This title is wholly unknown to the law, was assumed without any proper authority, and has been kept up under a practice of long standing.

When this defalcation became known, believing it to be my duty to cause the most thorough investigation to be made of the condition of the office, Mr. W. E. Warren, of the city of New York, an experienced auditor and accountant, was employed by me for the purpose, and his report will be transmitted to you at an early day. It shows that the whole amount of the moneys stolen by the nominal cashier was taken during the months of August and September, 1873, and that the fraud in applying the money to his own use was attempted to be covered up by false entries in the books of the office. There is no doubt that the defalcation is due, in a great degree, to the unwarrantable confidence reposed in him by the treasurer and his deputy. The former was absent from his office much of his time, and the latter, in the absence of his principal, seems to have surrendered the whole control of its affairs to the defaulting clerk, and to have endorsed drafts for a large amount of the moneys abstracted payable to the order of a pretended cashier of a private banking house in the city of New York of very questionable character, and he is unable to say whether the endorsements were filled up or signed in blank. It is proper to add that there is not the slightest ground for impeaching the integrity of the treasurer, or deputy, or any other subordinate in the office except the defaulting clerk. But there is no doubt the defalcation would have been prevented if the treasurer had been at his post and given to his duties the attention the state has a right to exact from the custodian of its treasure. In absenting himself for a considerable portion of his time he has but followed the example of his immediate predecessors and left the duties of his office (including the receipt and custody of millions of dollars) to be discharged by his deputy and clerks. He should be required by law to reside in Albany, and to attend personally to his responsible duties.

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[7] By chapter 147, passed April 10, 1874, the comptroller of the city of New York, for the purpose of providing funds with which to pay the city's quota of state taxes at the time fixed by law, was required to borrow the necessary amount on revenue bonds, which were made a charge against the city.

The constitution authorizes the governor to remove the treasurer for any "violation of his duty."[c] In a matter involving the reputation of a public officer, it was right, in my judgment, that this provision should be construed strictly and that the power of removal should not be exercised unless some duty expressly enjoined by law had been omitted, or some act expressly forbidden had been committed. Under this provision thus interpreted it did not appear to me that a case had arisen to warrant the extreme measure referred to.

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[c] Const. 1846, art. 5, § 7.

Several years ago a smaller defalcation occurred in this department. The deficiency was made up by taxation; and it will be necessary to lay another burden on the taxpayers to make up a new deficiency by authorizing a tax for the purpose.[8]

The comptroller and treasurer have adopted new safeguards by a more frequent inspection and comparison of the books of their respective offices; but absolute security from a fraudulent abstraction of the public funds can only be secured by the personal integrity of those who are concerned in their receipt and disbursement.

CANALS.

During the last year the public attention and interest have been earnestly given to the subject of cheapening transportation between the west and the Atlantic coast by the improvement of our natural and artificial waterways.

There is no economical question which concerns the people of this state more deeply. The most important aspect under which it can be viewed, is that of enabling them to procure at lower prices the supplies they require for their own consumption, and to obtain higher prices for articles they produce by enabling them to reach the point of exchange at a diminished rate of transportation. This is the local view, and the one in which the great body of our people have a primary interest. To the people of the west, and especially the grain producing districts, this is the sole view under which the question is regarded with much interest. They wish through cheaper transportation to sell their own products at better prices, and obtain at lower prices the articles they take in exchange.

There is another aspect of comparatively trifling importance to the west, but of the greatest consequence to us.

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[8] The amount needed to cover this defalcation was by chapter 417, approved May 11, included in a tax of sixty-nine one-hundred and sixtieths of a mill, to provide for the deficiency in the general fund.

It matters little to them by what channels they reach the markets for their products. But it is vital to the commercial ascendency of the city of New York, and to the continued success of our canal system, which has cost us so much, and which contributes so largely to our prosperity, that the communications between the two sections should not be lessened by the diversion into other channels of products seeking foreign markets.

It is not probable that any competing water communication can ever interfere with us materially, unless it be by the river St. Lawrence, which is reached by means of two short canals below all obstructions, thus affording a cheap and speedy connection with the ports of Lake Michigan. These two canals will probably be enlarged within a few years, so as to admit of the passage of vessels carrying cargoes of 1,600 tons, at a lower cost of transportation than we can afford, unless our canal locks can be so lengthened as to pass boats of greater capacity, or unless the cost of carrying can be reduced by using steam as a motive power, and lessening the time now required for transit from the lakes to tide water. In one respect the route to the ocean by the St. Lawrence will always contend at a disadvantage with ours. The port of New York is open at all seasons. The ports on the St. Lawrence are closed during six months of the year, and during these months Quebec and Montreal can only reach the ocean by several hundred miles of railroad.

If all the locks on the Erie canal were doubled, as they will be shortly, and the prism were made to conform to the prescribed dimensions, its capacity would, no doubt, be sufficient to perform all the service required of it for several years to come; and when to this increased capacity the application of steam, as a motive power, shall be added, its ability to maintain a successful competition with other routes cannot well be questioned. The experiments with steam already made, under the liberal inducement offered by the state, though not entirely satisfactory, leave little doubt that they will be so at no distant period of time.

When the canal debt is paid, or the payment secured by the accumulation of properly invested sinking funds, which shall equal in amount the bonds outstanding, the tolls can be again reduced and the cost of transportation be further diminished.

The expediency of constructing a ship canal to unite the waters of the Hudson and Lake Erie has recently given rise to much discussion. At the present time, with heavy burdens of taxation on the people of the state, in the prevailing derangement of business, and when we should economize our means by every practicable measure of retrenchment, it would be idle to take any steps toward the initiation of an enterprise of such magnitude and likely to involve an enormous expenditure. Should it be practicable at any future day to undertake it, I trust it may be with our own means and without the embarrassment of a copartnership with the federal government. Such a co-operation was suggested when the Erie canal was projected; but it was on full consideration renounced with the declaration on the part of the executive of the state that our resources were fully adequate to the accomplishment of the work "without extraneous aid."

In the meantime, with our canal fully completed for the transportation of bulky articles, and with our great railroad lines for those which are of lighter weight and more easily handled, there need be no fear that we shall be sufferers from the participation of our neighbors in the business of carrying.

RAILROAD COMPANIES.

The profligate management of some of our railroad companies and the losses resulting from it to those who have contributed to their construction, calls for some efficient measures of correction. The incalculable value of these improvements is universally conceded. They are indispensable to the public convenience; they enable us to cross the continent in less time than was required to go from New York to Buffalo half a century ago; and they bring to our doors products of the states and territories west of the Mississippi, which would otherwise never have reached us. They ought not by our legislation to be rendered unable to perform the valuable services they are rendering in bringing distant portions of our widely extended country into virtual contact, and in advancing our prosperity and growth with a rapidity hitherto unknown. But it is our duty to protect our towns and our citizens, who have aided in their construction, against the reckless and unscrupulous acts of the directors, by whom they are managed. Immense associations for railroad purposes, wielding hundreds of millions of dollars, have grown up within the last fifty years; and wherever great wealth is accumulated in new forms, we must expect it to be invaded through new forms of depredation. We have not kept pace with the progress of the crimes which this aggregation of capital has produced, by enacting suitable laws for their repression and punishment. The application of the funds belonging to railroad companies to objects other than those for which they were incorporated, and the use of these funds in any manner by the managers for private profit, should be made crimes punishable by imprisonment. It is a reproach to our criminal jurisprudence that there are hundreds of malefactors in our state prisons undergoing sentences for stealing sums under $50, while there are others at large who have by fraudulent contrivances for their own benefit sacrificed the property of confiding shareholders, many of whom are women and children, to the amount of hundreds of thousands of dollars, and are living in luxury on the proceeds of these enormous larcenies.

Our statutes in regard to the embezzlement of moneys and breaches of trust, are exceedingly defective in respect to the acts and persons embraced in them, the definition of the crimes, and the degree of the punishment awarded to them. Public officers and servants are not embraced in the statute of embezzlements; and it is doubtful whether it covers the acts of the officers and servants of public corporations, while the statute in regard to breaches of trust reaches only the acts of public officers, and provides for aggravated cases the inadequate punishment of imprisonment for a year in the county jail and a fine of two hundred and fifty dollars. There is nothing more glaring in the daily exhibition of crime than the abuse of fiduciary trusts. Little is needed now on the score of a firm and unsparing administration of justice; but there will be no security against the bad faith of trustees, employes of the state and the managers and directors of corporations, public and private, until the conversion to their own use of the moneys confided to them, or the diversion of such moneys from their proper objects, is more severely punished.[9]

Among those who have suffered by the fraudulent or improvident management of railroad companies, are the inhabitants of many towns, which have been induced to subscribe to the capital stock, and have issued their corporate bonds to pay for it. These subscriptions will, in all probability, in some instances be a total loss, which must be made up by assessments on the property of the people of the towns from which they were procured. The bonds already issued by authority of the legislature are no doubt valid. But it seems to me to be due to the inhabitants of our towns, who are solicited, and often successfully, to subscribe to the stock of these companies by sanguine or exaggerated representations as to their productiveness, that all laws authorizing such subscriptions should be repealed.

It is estimated that at least 75 per cent. of all the operations of the stock board in the city of New York are in railroad stocks and bonds; and the enormous speculations, of which they furnish the material, have contributed largely to the derangement of the legitimate business of the country. The practice by banks, which has to some extent prevailed, of certifying checks to be good when there were no deposits to meet them, has aggravated the evil by giving to particular individuals an almost unlimited credit, to be used in stock gambling. This practice should be arrested by making it a penal offence for any officer of a bank to certify a check unless the drawer of the check has a sufficient deposit in the bank to pay it.

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[9] By chapter 207, passed April 18, officers, agents and employés of municipal and other public corporations were brought within the scope of the law against embezzlements.

Under former statutes framed to restrain stock jobbing, contracts to sell or transfer at a future day evidences of debt or stocks, not in possession of the party so contracting at the time of the contract, were declared to be absolutely void. These provisions of law were repealed in 1859. If they were revived, as has been suggested, they would probably be so generally evaded as to be inoperative. But it is worthy of consideration whether they might not be successfully applied to the traffic in gold, which has led to speculations of the most pernicious character, and which may be a source of serious embarrassment if the federal government shall adopt measures to resume specie payments.

LEGISLATION.

One of the greatest evils of our legislation is the carelessness and want of consideration with which bills are framed and passed, especially near the close of the session of the legislature, when it cannot give to each bill the care and deliberation due to every enactment of law. During the ten days preceding the close of the last session 352 bills were sent to the Executive Chamber for approval. Some of them were so imperfectly framed that they would have been a discredit to the statute book, some were of doubtful meaning, others were in direct violation of the constitution, while the purpose of many could be attained under existing general laws. The adjournment of the legislature rendered it impossible for the executive to submit to it his objections to these bills. He was, therefore, constrained to withhold from them his approval without being able to confer with the houses in which they originated; and they were deposited in the office of the secretary of state, with a statement in nearly all cases of the grounds of his action.

The whole number of bills passed by the two houses of the legislature was 1,017. Of these 883 were of a private or local, and only 134 of a strictly public, nature. Although many of the former were unnecessary, as there were general laws under which their objects could have been substantially accomplished, they received the approval of the executive from a reluctance on his part to return bills to the houses in which they originated, without the most substantial objections. Nevertheless, he was constrained, notwithstanding his earnest desire to be in accord with the two houses on matters of legislation, to withhold his approval from 147 of the bills sent to him.

The constitution provides that corporations may be formed under general laws; but shall not be created by special act, except for municipal purposes and in cases where, in the judgment of the legislature, the objects of the corporation cannot be attained under general laws.[d]

The restriction contained in the last part of this provision has not been in all cases respected; for it is well known that charters are frequently sought and obtained by individuals desirous of being associated for private purposes, not because there is any difficulty in effecting their object under existing laws, but because a special act of the legislature is regarded as attaching to such associations a higher public estimation, even when conferring no additional privileges or powers. The legislature, in yielding to such applications, under a natural desire on the part of the members to gratify the wishes of their constituents, has disregarded a restriction, which was intended by the constitution as a restraint upon unnecessary legislation.

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[d] Const. 1846, art. 8, § 1.

Your attention is respectfully and earnestly invoked to this subject, with the assurance that much of your valuable time may be saved, and that you may avoid the hardship of transacting public business at your own expense.

THE SUPPLY BILL.

The act annually passed "making appropriations for certain expenses of government, and supplying deficiencies in former appropriations," was originally what its title imports, an act to supply deficiencies in preceding appropriations, and usually covered two or three pages of the statute book. Last year it covered thirty-one pages, and by far the larger amount of its appropriations were for ordinary expenses of government, or for objects in no manner answering to the description of deficiencies. It is, in fact, to all intents, a second appropriation bill. There is no reason why it should not be made what it was originally, and still professes to be, an act to provide for deficiencies in former appropriations.

I most earnestly and respectfully request that the bill making provision for these objects may be sent to me not later than the 1st day of March, that full time be afforded me for examining it, and for you to reconsider it if it shall be found to contain matters which ought not, in my judgment, to receive my approval. At the last session of the legislature it was not passed until the very last moment, and, indeed, the adjournment was delayed for several hours after midnight in order to dispose of it. It is of the greatest importance to make all appropriations for the necessary expenses of government at an early day, and if another bill is required to provide for supplying deficiencies it should be sent to the governor for approval long enough before the close of the session to enable him to examine it with care, as he would, if he found objectionable items in it after the adjournment, be compelled to approve what he considered wrong, or withhold his approval from it altogether, and thus to defeat provisions indispensable to meet urgent public needs.[10]

EMINENT DOMAIN.

Among the bills left on my hands by the legislature was one authorizing the common council of one of our cities in the interior of the state to purchase or acquire lands for a public cemetery for its use, and conferring the right to take such lands without the consent of the owner. My approval was withheld from this bill from considerations to which I deem it proper to call your attention.

The right of every individual to be secured in the undisturbed enjoyment of his property lies at the foundation of all responsible government. It is, indeed, one of the primary objects for which governments are instituted. To this fundamental rule there is but one proper exception. If private property is needed for public use, it may be taken by making just compensation to the owner; but the use must be one which is common to all, or which is indispensable to the accomplishment of some object of public necessity.[e] This right of eminent domain, as it is denominated, is an incident of sovereignty; and it is one of the most arbitrary of all the powers of government.

In this state it has long been exercised for the purpose of constructing highways, canals and bridges, and, more recently, for railroads and supplying cities and villages with pure and wholesome water. In the latter case it is justified by the fact that the public health is directly concerned. Although railroads partake largely of the character of highways and are subject to the common use of the public on terms regulated by law, the delegation to them of the right to take private property for their use without the owner's consent was considered by many as exceedingly questionable, and was not conceded without hesitation by the legislature. In all these cases there is a necessity, in order to avoid or overcome physical obstacles, for pursuing given courses, and the refusal of a single owner of property might defeat the public object in view. Under such circumstances the government deemed it justifiable to interpose, and to authorize the property to be taken on making just compensation for it.

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[10] The situation presented by the Governor's observations on the supply bill was relieved to some extent by a constitutional amendment, adopted in 1874, which took effect January 1, 1875, under which the Governor was authorized to veto separate items in appropriation bills. This power may be exercised by the Governor during the session, and also during the period allowed by the same amendment for executive consideration of bills after adjournment of the Legislature, which was fixed at thirty days, and is commonly known as the thirty-day period.

[e] Const. 1846, art. 1, § 6.

There is no such overruling necessity in selecting sites for cemeteries. If suitable ground cannot be obtained in one direction, it may be found in some other; and there is no reason why the matter should not be left to agreement by the parties. To take a man's property from him against his wishes and remonstrances for such a purpose seems to me a violation of one of the first principles of government.

Chapter 760 of the laws of 1870 undertakes to confer this right on incorporated rural cemetery associations. It authorizes private corporations to take a man's property from him without his consent at a valuation to be made by others, for the exclusive use of its shareholders. The bill referred to had the same objectionable feature in providing for the sale of burial plots to private individuals. Thus the common council after compelling a man to sell his property against his wishes, was authorized to re-sell it to others for their private use.

A still more objectionable bill was passed at the last session of the legislature by both houses, but was subsequently withdrawn.

Your attention is called to this subject with the hope that you will deem it your duty to arrest further progress in this direction and to repeal the act above mentioned; for it is not difficult to foresee that without some check to this invasion of private rights, the time may come, under a less virtuous condition of society, when no man can say with confidence that his farm is his own.*

THE CURRENCY.

The city of New York is the financial and commercial centre of the Union. The greater part of the revenue from imports is collected there; and there, by its widely extended mercantile transactions, our foreign exchanges are for the most part regulated. Unfortunately, too, it is the principal theatre of the speculations, always enormous and frequently fraudulent, by which the legitimate business of the country is deranged and its good name sullied. The interests of the city and the state are thus so intimately interwoven with the condition of the currency of the country, that I feel justified in considering it within the provision of the constitution, which requires the governor "to communicate by message to the legislature at every session the condition of the state and recommend such matters to them as he shall deem expedient." †

The financial pressure, under which the country is laboring, has exhibited a new phase — a suspension by the banks, not of payment in specie, but of payment in depreciated and inconvertible paper — a lower depth of discredit than we have ever before reached. Their condition, when public confidence was at its lowest ebb, may be exemplified by the hypothetical case of a debtor, who, when called on to pay, could only give his creditor a certificate that he owed him the money; and it is worthy of consideration that their inability to meet their obligations occurred with $700,000,000 of circulating bank and government notes outstanding.

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* For the veto of the Auburn cemetery bill, see 1873, *ante*, p. 602.

† Const. 1846, art. 4, § 4.

The disordered condition of the currency, out of which this extraordinary suspension arose, is a source of general dissatisfaction to the people of the country and of serious injury and embarrassment to our commercial transactions at home and abroad. Indeed it may be justly said that the recent sudden revulsion in nearly all the channels of productive industry, by which multitudes of the laboring classes have been thrown out of employment, the fraudulent devices for pecuniary gain, the inordinate speculations, the profligate expenditure, public and private, and the wide-spread demoralization, by which we are dishonored, are the legitimate consequences of a long continued suspension of specie payments by the government and the banks. If, as is believed, nothing but imminent danger to the public safety can justify a legislative act making depreciated paper a legal tender in contracts between individuals, it is the manifest duty of the government to repeal it at the earliest practicable day, when the danger is over, and put an end to the evil and injustice it has produced. And yet, after the lapse of nearly nine years from the suppression of the rebellion, no step has been taken by congress to repair this great public and private wrong. No country has ever had more abundant facilities for restoring or keeping up its circulating paper to the universal standard of value than we have possessed during this long period of inaction. We are producers of the precious metals in large quantities. The products of our mines during the last nine years are reported at $639,500,000. In the same period we coined $244,351,394.89 in gold, and $25,787,331.76 in silver — in all, $270,138,726.65. Thus, but little more than 42 per cent. of the products of our gold and silver mines have reached our mints, while one of the chief occupations of our assay offices has been to convert our bullion into bars for exportation. We have, by the continued use of irredeemable paper, banished from the country the greater part of the precious metals which we have produced, or driven them into the manufacture of articles of luxury. We have gone so far in this false direction by the issue of $48,000,000 of fractional currency, as it is called (more than $28,000,000 of which is below the denomination of 50 cents), that we have expelled all our silver coin from circulation, leaving the whole business of domestic exchange to be carried on with depreciated paper, excepting the pieces of base metal in use of the value of five cents and under. To make the return to specie payments more remote and difficult the treasury department has during the last five years thrown into the market for sale $324,108,539 of gold coin. If half this amount had been kept in the public vaults, we might at this very hour have safely declared the circulating notes issued by the government to be redeemable in specie; while the gradual accumulation of such a supply of the precious metals would have been accompanied by a corresponding restraint on over-trading and speculation and rendered the transition to our present state of restriction comparatively easy and harmless.

There can be no higher proof of the impolicy of this process of self spoliation than the fact that a direct reversal of it is the only mode by which we can hope to return to the standard of specie. The steps to be taken are, first, to regain the precious metals, of which we have improvidently stripped ourselves, and then to withdraw the paper, by which they have been driven into other channels. If our import duties do not yield a surplus for accumulation after paying the interest on our public debt, it would be far better to repurchase (as we can at a less price than we sold) a portion of the coin we have parted with than to prolong a state of things which is equally injurious to our industry and discreditable to our character as a commercial people. It is one of its unjust consequences that we levy on external commerce the whole amount of coin with which the interest of the public debt is paid, thus throwing upon a single branch of industry a burden which should be shared by all.

The experience of all countries attests that a paper circulation cannot be secured from pernicious fluctuations, unless it is upheld by a broad basis of specie. Independently of the consideration of stability in the value of the instruments we employ to effect our domestic exchanges, it is of vital interest to the laboring classes that the precious metals should enter so largely into circulation as to constitute the principal medium for the payment of their wages and the purchase of necessaries to supply their moderate wants. To accomplish these objects we must withdraw our fractional currency and a sufficient amount of notes of other denominations to make the residue practically redeemable in specie. The result would be to infuse into the circulation a supply of coin on which the government and the banks could draw in cases of emergency, and avert much of the evil incident to the fluctuations of a currency consisting largely of paper. The Bank of England issues no notes under five pounds sterling — about $25. The Bank of France issued none before the war with Germany under fifty francs — about $10. The latter country had nearly $450,000,000 in gold and silver coin at the commencement of that contest. Without such a supply of specie to draw upon she could not, without great pecuniary and commercial disaster, have paid the enormous war fine of nearly $1,000,000,000 in which she was mulcted by the emperor of Germany.

There are already numerous schemes to remedy existing evils, some of them providing for an additional issue of interest bearing bonds redeemable in greenbacks; or, in other words, of paper in one form, redeemable in irredeemable paper in another form. Unless the testimony of all history is discarded, these schemes can have no other consequences than to prolong and aggravate prevailing embarrassments, and end in a catastrophe more overwhelming to the prosperity of the country and the credit of the government, than any we have yet experienced. It is a great error to suppose that there is any mystery in the currency question, however industriously the belief may be propagated by the advocates of paper, so long as all our reasonings concerning it are in relation with the standard of specie. It is only when men undertake to make that which has no intrinsic value perform an office to which intrinsic value is indispensable; or, in other words, it is only when men try to solve the impossible problem of ascertaining with how much inconvertible paper the commercial transactions of a great country can be carried on, that their minds become mystified and run into the most illogical theories. It is believed that the remedial process, by which we are to be effectually relieved, is one of the utmost simplicity—namely, to gather together at the earliest day possible, by purchase or otherwise, a sufficient amount of specie, to enable us to declare our circulating paper redeemable in coin. The precise amount needed may be the subject of some difference of opinion, but not so great as to cause any serious embarrassment.

The present moment is a most favorable one for restoring the country to a solvent condition. The state of our foreign commerce, the abundance of our harvests and our general prosperity, combine to inspire confidence in any well directed effort to accomplish the object; and it is the opinion of many of our most judicious and experienced bankers and financiers, that the government may safely declare now that it will redeem its circulating notes in specie, on the 1st of January, 1875.

It is not to be disguised that powerful influences are likely to be felt in congress, and are already at work in opposition to all measures framed with a view to bring about the resumption, which public opinion clearly demands, and to which the government is distinctly pledged. Among these are a large portion of the banks, which look only to present profit; the debtor classes, which naturally desire to pay in the cheapest currency; the large manufacturers, who derive from the premium on gold a protection beyond that, which is incident to the present high tariff of duties on foreign products; and the rapacious swarm of speculators, whose schemes can best be accomplished with irredeemable paper. It remains to be seen whether these interests are to control the action of congress in disregard of the common welfare, or whether, as is earnestly to be hoped, they will be firmly and effectually resisted.

I should not have dwelt on this subject so much in detail but for the deep interest of the people of this state in securing and maintaining a stable currency convertible at all times into specie. The evils we are suffering have been often repeated, but they seem to fade out of our remembrance with every season of returning prosperity. More than half a century ago, in a similar financial and commercial crisis, De Witt Clinton, while occupying the executive chair of this state, addressed to the legislature sitting in the same halls in which you are assembled, the following emphatic language:

"The banishment of metallic money, the loss of commercial confidence, the exhibition of fictitious capital, the increase of civil prosecutions, the multiplication of crimes, the injurious enhancement of prices, and the dangerous extension of credit are among the mischiefs which flow from this state of things."*

These words of an illustrious statesman, coming back to us after the lapse of years and portraying with striking fidelity our present condition, manifest that no increase in population and wealth, no advance in general prosperity, no progress in productive industry, in art or in civilization, can shield us from the fluctuations and reverses, which are sure to follow in the train of an irredeemable paper currency.[11]

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* See annual message 1818, *ante*, vol. 2, p. 917.

PUBLIC BUILDINGS.

It is worthy of your consideration whether some uniform mode of superintending the construction of the public buildings which are in progress should not be adopted. Besides the new capitol there are three hospitals or asylums for the insane (the Hudson river state hospital at Poughkeepsie, the homœopathic asylum, at Middletown, and the state asylum, at Buffalo), and a state reformatory at Elmira, which are incomplete.

The original estimates for the construction of these buildings are nearly as follows:

The new capitol at Albany	$4,000,000.00
The Hudson river state hospital	800,000.00
The homœopathic asylum	100,000.00
The state reformatory	680,000.00
The Buffalo state asylum	600,000.00
	$6,180,000.00

There have been expended on these buildings the following sums, viz.:

The new capitol, the external walls of which are only raised to the height of the first story	$4,961,620.00
The Hudson river hospital, about one-third completed, and for drainage and water supply	1,100,000.00
The homœopathic asylum	195,000.00
The state reformatory, on the foundation walls, the walled inclosure, and the lower story of part of the building	451,811.06

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[11] See special message of April 7, *post*, p. 667.

The Buffalo asylum, on the foundation, administration building, two wards and rear buildings	$549,558.26
	$7,257,989.32

A fair estimate of the cost of these structures and their appurtenances, if completed according to their present plans, is believed to be as follows, viz.:

The new capitol	$15,000,000
The Hudson river hospital	3,000,000
The homœopathic asylum	600,000
The state reformatory	2,000,000
The Buffalo asylum	3,000,000
	$23,600,000

or nearly four times the original estimates.

The increased cost has been caused in some instances by changes of plan, and to some extent by the advanced price of labor and materials; but it is to be accounted for in a far greater degree by understating the necessary expenditure in the original estimates; and it is not believed that the legislature would have authorized the construction of these buildings on the plans adopted, if accurate statements of their probable cost had been submitted to it.

The capitol at the seat of government represents the sovereignty of the people of the state. The laws by which they are governed are enacted within its walls. It is right that it should bear in its dimensions and the perfection of its architecture, a just relation to the dignity of the service to which it is dedicated; and the people will not object to any reasonable expenditure which may be necessary to make it a fitting symbol of their supremacy and power.

The proposed expenditure is nevertheless far greater than it should be; and it is believed that it may yet be reduced without impairing the architectural finish or proportions of the edifice.

In regard to buildings intended for the treatment and care of the insane, and for the custody, punishment or reformation of criminals, it is neither necessary nor appropriate that they should be ornamental or costly in their architecture. They should be plain and substantial, and should be constructed with the single purpose of adapting them to the uses for which they are designed. The cities and districts within which they are established will very naturally desire that they should be highly embellished as ornaments to their neighborhoods; and as the superintendence of their construction is usually confided to persons who reside near them, it will require great care on the part of the state, as experience has shown, to prevent the plans from being modified by costly alterations or additions.

The most effectual method of guarding against defective estimates of cost and changes of plan involving additional expenditure is to place the construction of all buildings to be erected at the expense of the state, under a single superintending architect, with a salary sufficient to command the highest qualifications. Such an arrangement would also save to the state a large portion of the compensation now paid to a number of architects receiving a percentage on the amount expended in the construction of the buildings respectively in their charge. No plan should be finally adopted and no building commenced until all the working drawings are perfected; and when this is done, an experienced builder is often more competent to carry on the work of construction than the architect by whom it was designed.

If the appointment of a superintending architect is provided for, his first duty should be to see whether such modifications may not be made in the plans of the buildings now in progress as to secure a material reduction of their cost. That the expenditures have not only been unnecessary but extravagant, in more than one instance, cannot well be doubted. The Hudson river hospital, so far as it is constructed, is a model building, but it has cost a larger sum than was necessary, and certainly much more than the state can afford, if provision is to be made for such of our seven thousand insane as are in indigent circumstances. The materials for another section of the building are on hand and paid for; and it is desirable that this section, which can be constructed according to the same external design at a comparatively less cost than the one already completed, should be finished as speedily as possible. The expense of drainage and supplying the institution with water has also been paid, so that the further expenditure will be limited to the cost of the building and its necessary furniture.

It is also desirable that the two wards of the Buffalo asylum partially constructed, should be completed so as to be in condition to receive inmates.

With these two exceptions, and with an appropriation for the new capitol, it is due to the people of the state, already overburdened with taxes, that further expenditure on these buildings should cease until the plans can be revised and their cost brought within reasonable bounds. It is of the more importance, as other receptacles will be needed to provide for the insane poor. A large number are in county poor-houses in the most deplorable condition and wholly without remedial treatment; and there can be little hope of making provision for them if millions are lavished upon two or three costly establishments.[12]

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[12] The office of state architect was created in 1899, by an act, chapter 566, which amended the public buildings law of 1893. Under this law the capitol commissioner, continued from former statutes, was the architect of the capitol. An act passed in 1898, chapter 37, enlarged the scope of the duties of the office of capitol commissioner, and required him, without additional compensation, to prepare plans of all buildings to be erected by the state. The act of 1899 changed the name of the office, and continued its powers and duties substantially as defined by the act of 1898.

CERTIFICATES FOR SERVICE IN THE WAR OF 1812.

In 1859 an act was passed making compensation to the militia of this state for certain expenses incurred in the war of 1812. Under this act awards were made and several thousand certificates were issued. The Legislature appropriated $50,000 in 1869 and $100,000 in 1870 for the payment of these certificates. There are many thousand yet outstanding, and, as they bear interest, the amount due on them is constantly increasing. Frequent applications are made for payment, but beyond a balance of less than $3,000 there are no moneys in the treasury applicable to this object. The holders of these certificates, or, at least, those to whom they were issued, are old men, and can derive little benefit from them unless they are speedily paid. Many of them have, no doubt, passed into other hands, but to the extent that the faith of the state is pledged for their payment, provision should be made for the purpose. Partial payment has been made on a large number of the certificates, and their validity is thus acknowledged in a twofold sense.[13]

OBSTRUCTION OF THE HARBOR OF NEW YORK.

Your immediate attention is earnestly called to obstructions in the harbor of New York, caused by discharging ashes and cinders from steamboats, and throwing earth, stones and rubbish of all description into its waters, and also by the construction of docks extending into those waters far beyond the exterior lines heretofore established. There are legal provisions by which obstructions from the first-named cause may be restrained by fines, but the pilot commissioners, who are authorized to prosecute them, have no means of meeting the expense of detecting violations of law. The subject is one of pressing urgency. Shoals are in the process of formation, and it is a well-known principle that as the tidal flow inward from the sea, at the mouths of rivers, is impeded by the obstruction or contraction of the channel, the outward flow is proportionably diminished in force, and the harbor becomes gradually shallower. The harbor of New York has already been seriously injured by these obstructions, and unless their progress is arrested by speedy and efficient measures, there is great danger that it may in the course of time share the fate of many maritime ports in Europe which have, through like causes, become wholly useless.

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[13] Chapter 350, approved May 7, 1874, appropriated $100,000 to be applied in part payment of the amount due on certificates held by residents of the State for services in the war of 1812.

CENTENNIAL EXHIBITION.

On the 3d of March, 1871, the congress of the United States passed an act to provide for celebrating the one hundredth anniversary of American Independence by holding an international exhibition of arts, manufactures and products of the soil and mine, in the city of Philadelphia, in the year 1876.

The act provided for the appointment of a commissioner and an alternate commissioner from each state and territory, to constitute a commission which was required to hold its meetings in the city of Philadelphia, and to report to Congress a plan for carrying out the object of the act.

Preliminary measures have been already adopted for the purpose, and the president of the United States has issued his proclamation commending the celebration and exhibition to the people of the United States and to all nations who may be pleased to take part in them.

It is now recommended by the centennial commission that each state and territory appoint a board of managers, not exceeding five in number, for the purpose of organizing their respective states and territories, and of securing a thorough representation of the products of industry of each in the exhibition.

Several of the states have entered with earnestness upon the work, and it is greatly to be desired that it should be carried out in a manner which will be creditable to the country. In order that the products of our own industry may be advantageously exhibited, a state board seems to be indispensable. It is not proposed that the members should have any compensation, and it is not doubted that gentlemen can be found who will undertake the service for the purpose of insuring a proper representation of the state at an exhibition in which our states and territories and foreign countries will take part. But it ought not to be expected that they should do more than pay their own personal expenses. The labor of preparing and managing the exhibits of the states is very great, and cannot be performed without the aid of a secretary and clerk and without incurring expenditures for the rent of an office and some incidental objects. These expenditures must be borne by the state, if such a board is created. The amount need not exceed seven or eight thousand dollars a year for the term of two years from the fourth of July next.[14]

AMENDMENTS TO THE CONSTITUTION.

It will devolve on you to consider and act upon the amendments to the constitution, which were agreed to by the two branches of the legislature at its last session. Should they be agreed to by a majority of all the members elected to each house at the present session, it will be your duty to submit them to the people, and if, on being so submitted, they are approved and ratified by a majority of the electors qualified to vote for members of the legislature voting thereon, they will become a part of the constitution. These amendments were matured after the most deliberate consideration by a body of citizens eminent for their ability and experience, representing in equal numbers the two leading political parties in the state, and they provide for defects in the constitution, which have been a source of great public inconvenience and injury. It is earnestly hopd that they may meet your approval. Should you fail to agree to them it would be necessary to institute new proceedings, which would prolong existing defects in the constitution for a further term of three years.[15]

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[14] The Legislature complied with the Governor's recommendation by adopting a concurrent resolution authorizing him to appoint a commission of five members to represent New York at the centennial exhibition, the commissioners to receive no compensation for services or expenses.

Having thus laid before you such considerations as the condition of the state seems to me to demand, it only remains for me to express the hope that your deliberations may be carried on in friendly concord to results which will promote the best interests of your constituents. It will be a source of sincere gratification to me if I can contribute, by any co-operation on my part, to the harmony of our official intercourse and to the welfare of those we represent. It may be regarded as a fortunate occurrence that the two great political parties in the state are represented with so near an approach to equality in both branches of the legislature; and if differences of opinion shall manifest themselves on questions of which our party divisions are the growth, I look to both with the same confidence for pure and patriotic action on all matters affecting the good name of the state and the welfare of the people. In this assurance and trust I tender you a cordial welcome to the halls of legislation.

JOHN A. DIX.

Albany, Jan. 6th, 1874.

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[15] The constitutional amendments agreed to by the Legislature of 1873, were not all again agreed to by the Legislature of 1874, but those which were adopted were submitted to the people at the next general election by chapter 330, approved May 6, and were approved, taking effect January 1, 1875. See also 1872, notes 15 to 28, inclusive, *ante*, pp. 394–403.

SPECIAL MESSAGES.

January 16. To the Assembly: Transmitting the report of the Sanitary Committee of the Board of Health of the Health Department of the City of New York.

January 16. To the Assembly: Transmitting a resolution adopted by the Board of Health of the City of New York on the 13th of January, 1874, recommending the enactment of a law requiring railroads entering the city to run cheap morning and evening trains for the benefit of the laboring classes to the distance of not less than fifteen miles from their several depots. The resolution recited the recent acquisition of a large extent of unoccupied territory which would be available for the residence of the families of the laboring men and artizans employed in that city.

January 16. To the Assembly: Transmitting the report of William E. Warren, regarding the late defalcation in the Treasury Department.

January 28. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *January* 28, 1874.

"I have the honor to transmit herewith a communication from the comptroller in regard to the sinking funds set apart by the constitution, and sacredly pledged to pay the interest and redeem the principal of the state debts.[f] I cannot too strongly commend the facts and suggestions contained in this communication to your attention. They concern the proper administration of the financial department of the government and the preservation of the good faith of the state toward the public creditors.

I have referred to this subject in both my messages to the legislature, and more particularly in the one which I had the honor to make to you at the commencement of your present session. In the financial statement presented to me when I was preparing it the aggregate amount of the several sinking funds was set down at $15,594,901.05. On inquiry in what manner these funds had been set apart, as required by the constitution, I found that nearly two-thirds of the amount existed only on paper, and that the moneys belonging to them had been consumed in defraying the current expenses of the government, in direct violation of the constitutional requirement and of the plighted faith of the state. The communication of the comptroller explains the manner in which this failure to fulfill a high constitutional obligation has been caused, and points out the only mode in which the obligation can now be complied with. I do not doubt that it is his duty, under the higher law of the constitution, to invest all moneys raised by taxation for these funds as rapidly as they come into his hands, instead of expending them to meet legislative appropriations, and to leave the latter unpaid until other means are provided for them. In my first annual message I assumed that, as sinking funds were, in their nature, a solemn pledge of faith to creditors for the payment of the debts due to them, to borrow money on the credit of those funds for other purposes, to make them the subject of any other pledge, or to make even a temporary use of the moneys or securities of which they consisted, was a clear violation of the pledge originally given. Further reflection has confirmed my confidence in the correctness of this conclusion.

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[f] Const. 1846, art. 7, §§ 1, 2, 3, am. 1854, and § 12.

Some years ago there were uninvested moneys belonging to the capital of the general fund debt sinking fund, and these moneys were used to meet current expenditures. Since that time the legislature has, in repeated instances, authorized the comptroller to invest surplus moneys belonging to the capital of the sinking funds in taxes thereafter to be collected, and to apply these moneys to meet appropriations made by the same act. An investment in a tax does not convey a very definite conception of the financial measure intended. In plain terms, it is an expenditure of money to be replaced at a future time, by taxation. But in point of fact, when the authority to invest was given to the comptroller, in the instances referred to, there were no surplus moneys in existence to be invested or expended, and the result has been, that the principal of the sinking funds has been invaded and consumed, as already stated.

The largest deficiency is in the sinking fund of the bounty debt. This debt was contracted under section 11 of title 7 of the constitution. The sinking fund to extinguish it was created by chapter 325 of the Laws of 1865, and the money provided for it became, by virtue of the section referred to, applicable to the repayment of the debt, and 'to no other purpose whatever.' Like the sinking funds of the general and canal fund debts, it is inviolable, and can only be invaded and consumed through an infraction of the constitutional requirements.

The act, chapter 448 of the Laws of 1867, amending that of 1865, requires the comptroller to invest the proceeds of the annual tax, authorized to be levied for this sinking fund, from time to time, as it can be judiciously done, in the bonds authorized to be issued under that act, 'or in any of the stocks issued by this state or the United States.' The requirement of the constitution setting apart the sinking funds for the payment of the state debts, and the requirement of the law in regard to the bounty debt sinking fund, are in accord, and a failure to make the investment prescribed by the latter would involve a violation of both.

I make these suggestions, with entire confidence in your earnest desire to take such measures as may be necessary to maintain inviolate the faith of the state, and to relieve the financial department of all embarrassment in meeting public obligations, both of an ordinary and extraordinary character.

JOHN A. DIX."

For comptroller's communication, see Senate Document, No. 29.

February 3. To the Legislature: Transmitting the report of the Cooper Union for the Advancement of Science and Art.

February 17. To the Legislature: Transmitting the statement of the pardons, reprieves and commutations for the year 1873.

February 19. To the Senate: Transmitting a communication from the Commissioners to revise the statutes.[16] [See Senate Document, No. 57.]

March 4. To the Senate:

Veto of a bill entitled "An act to incorporate the New York Club of the city of New York."

"Chapter 368 of the Laws of 1865, entitled 'An act for the incorporation of societies or clubs for certain social and recreative purposes,' was designed to authorize the formation of such associations by filing in the office of the Secretary of State a certificate setting forth their names, titles, objects, etc., and to dispense with the necessity of resorting to the Legislature for special acts of incorporation. The real estate which they were authorized to hold was restricted to $50,000 in value and the personal estate to $75,000.

The bill herewith returned seems to be designed to revive or continue in existence an association in the city of New York called the New York Club, conferring upon it corporate powers; and the material provision contained in it appears to be to authorize it to hold, as well as to dispose of in the customary modes, real and personal property to the amount of $500,000.

On the 27th ult., I approved a bill amending chapter 368 of the Laws of 1865, above referred to, conferring on the societies and clubs incorporated under it the right to hold real estate to the amount of $500,000, and personal estate to the amount of $150,000, exceeding by the last named sum the amount the New York Club is authorized to hold under this bill. This act, now become a law, will constitute chapter 35 of the Laws of 1874.

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[16] Chapter 212, passed April 18, 1874, extended for two years the term of office of the commissioners appointed to revise the statutes.

The bill is, therefore, entirely unnecessary. The New York Club may be incorporated under the general law, with all the powers it desires to possess.

One of the proposed amendments to the Constitution to be submitted to the people at the next general election provides for the passage of general laws and prohibits the passage of special laws in certain enumerated cases, one of which is that of granting to private corporations, associations or individuals any exclusive privilege, immunity or franchise whatever.[g]

This amendment, which was agreed to by the last Legislature, has been favorably considered by both houses now in session, and its submission to the people has been anticipated, so far as societies and clubs for social and recreative purposes are concerned, by the passage of the above-named general law. My own views are in perfect accord with yours and those of your predecessors, and I do not perceive how I can better evince my conformity to them than by withholding my assent from this bill."

The bill was not passed over the veto.

March 9. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *March* 9, 1874.

"I avail myself of the earliest moment to announce to you the death of the Hon. Millard Fillmore, at his residence, in Buffalo.

The prominent part which he bore in the affairs of the State and the Union; the ability and integrity with which he executed the various official trusts confided to him by his fellow-citizens; his faithful administration of the highest office in the gift of the American people, and the purity of character by which he was distinguished throughout a long, conspicuous and useful career, constitute a claim to the public respect to which I do not doubt you will be glad to give expression. It is gratifying to us, as citizens of his native State, to be able to add that few men have passed through so many political vicissitudes as free from offense, and few lives have been characterized from their beginning to their close with such consistent calmness.[17]

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[g] Const. 1846, art. 3, § 18, added 1874.

JOHN A. DIX."

Millard Fillmore died March 8, 1874.

March 24. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *March* 24, 1874.

"In accordance with a concurrent resolution of the senate and assembly, 'requesting the governor to appoint two persons to examine claims of the Oneida Nation of Indians,' received by me on the 11th instant, I have the honor to inform you that I appointed, as such suitable and proper persons to make the examination, Abraham Lansing, Esq., of Albany, and Anson S. Wood, Esq., of Wolcott, Wayne County.

On the 23d instant they reported to me, and I now transmit their report to your honorable body.

JOHN A. DIX."

The following is the report:

"To His Excellency JOHN A. DIX, Governor of the State of New York:

The undersigned commissioners, appointed under and pursuant to the following joint resolution of the senate and assembly:

'*Whereas,* The representatives of the Oneida Nation of

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[17] Each house adopted resolutions on the death of former President Millard Fillmore, and a joint committee was appointed to attend his funeral.

Indians claim that there is due to said nation divers sums of money for lands and leases stipulated under the several treaties with said nation; now, therefore,

'*Resolved,* That his excellency the governor be, and he is, requested to appoint two suitable and proper persons to examine and report to his excellency, during the present session of the Legislature, the facts in relation to such claims.'

Beg leave to respectfully report: That certain chiefs and head men of the Oneida Nation of Indians appeared before the undersigned, and submitted the following statement of the claim of said Indians against the people of this State:

'The said Oneidas claim that their reserved lands on the north side of the Oneida lake, located at the distance of six miles, a part being three lots one-half mile square each, were never ceded to the people of the state of New York, and that the title thereto is yet in said tribe.

'The said Oneidas further claim that the land reserved for a fishing place on the Onondaga river, about three miles from the Oneida lake and one mile square, has never been ceded to the people of the state of New York, and that the title thereto is yet in said tribe.

'The said Oneidas further claim that said several parcels of land were sold and conveyed by the people of this state, and that said tribe has never received any compensation therefor.

'The said Oneidas further claim that subsequent to the sale of said lands the said tribe claimed compensation therefor, and the surveyor general of the state said to them, the legislature will make it right.

'The Oneidas further claim that the fish, game, etc., reserved in treaties made with the people of this state have been destroyed.

'The Oneidas further claim that the annuity or lease money reserved in and promised to be paid by the treaty of

1795 has been in part withheld, and is now due and owing to said tribe.

'The Oneidas further state that the quantity of land embraced in said treaty is much larger than claimed by the state, and that at least 39,430 acres have never been paid for, and the said Oneidas claim payment therefor up to this date.'

After due examination of the several claims, the undersigned submit the following facts found by them:

FIRST.

By the treaty of September 22, 1788, the Oneidas reserved three lots, each one-half mile square, at a distance of six miles apart, on the north shore of the Oneida lake, and also a convenient piece of land at the fishing place on the Onondaga river, about three miles from where it issues out of the Oneida lake.

See copy treaty hereto annexed, marked 'A.'

No treaty, agreement or document can be found by which these lands are ceded to the people of this state.

The fishing place on the Onondaga river does not appear to have been located or defined.

By chapter 39, Laws of 1796, the surveyor-general was authorized to exchange the three lots on the north side of the Oneida lake with the proprietors of the lands on the north side of Wood creek. This exchange was not made.

In March, 1816, the three lots on Oneida lake were appraised by B. Wright, and his appraisal in writing filed in the office of the surveyor-general.

See copy appraisal hereto annexed, marked 'B.'

In October, 1816, Elisha Smith, writing from Constantia, in the neighborhood of these lots, inquires about the same of the surveyor-general, and says he is informed that the Indian title has been extinguished.

See copy letter hereto annexed, marked 'C.'

On the 21st of February, 1822, the surveyor-general made a report to the Legislature, in which he states that by ' a later treaty ' these lots have been ceded to the people of this state.

See copy report hereto annexed, marked ' D.'

By chapter 66 of the laws of 1822, the surveyor-general was required to sell the easternmost lot to Eliphalet Jewell and Asa Millington. In that year the three lots were sold for the sum of $1,812 in the aggregate.

In the treaty of September 15, 1795, the piece of land on the Onondaga river and the reservations on the north side of the Onondaga lake are again reserved, but are not mentioned in subsequent treaties.

See copy treaty hereto annexed, marked ' E.'

This piece of land on the Onondaga river, called ' the fishing place,' was included in and covered by grants made by the people of this state to Ezra L'Hommedieu and Barent J. Staats subsequent to the last named treaty and prior to the year 1800.

The statement hereto annexed, marked ' F,' copied from the annual report of Comptroller Flagg in 1839, shows the several payments made to the Oneidas on account of lands.

At an interview held by the representatives of the Oneidas with the surveyor-general, in June, 1824, he claimed that the three lots on the Oneida lake had been ceded to the people, but was unable to find the treaty ceding the same.

See testimony of John Hadcock, hereto annexed, marked ' G.' Statements of chiefs also annexed.

SECOND.

The claim for loss of game, etc., was pressed before the undersigned, but is without any foundation whatever.

The Oneidas only reserved the right to fish and hunt. This right has never been denied them.

See copy treaty of 1788.

THIRD.

The treaty of 1795 provides for the payment annually to the Oneidas of the sum of three dollars for each one hundred acres of certain lands ceded in and by the said treaty to the people of this state.

The tract so ceded, and for which payment was to be made, as aforesaid, is known as the 'Two Mile Tract,' and contains five thousand five hundred and sixty-five acres.

There was paid to the Oneidas annually up to 1839, on account of the lands ceded in and by the treaty of 1795, the sum of $3,869.28, including the sum of $600 provided for in the treaty of 1788.

The principal of this sum, together with other annuities payable to the Oneidas, was fully paid in 1839, 1840 and 1841.

See comptroller's reports of those years, and statement hereto annexed, marked 'F.'

The amount of land for which the people of this state were to pay an annual sum at the rate of three dollars per hundred acres was determined soon after the making the treaty of 1795, and payments were annually made, and no question as to the amount was raised until about 1866.

The undersigned have hereunto returned the evidence presented to them on behalf of the Oneida Indians, with reference to their claims.

Respectfully submitted.
ABRAHAM LANSING,
ANSON G. WOOD,
Commissioners.

Albany, March 23, 1874.

For schedules, see Senate Document No. 79.

April 7. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *April* 7, 1874.

"I deem it due to the interest and honor of the State to call upon you, its chosen representatives, to take into consideration the propositions before Congress in regard to the currency. Though yet immature and requiring the concurrent action of both Houses to give them the validity of law, they have, nevertheless, received in each such partial sanction as to excite serious alarm as to the result. In my annual message in January last, I expressed the earnest hope that the paper circulation issued by the government would be curtailed, and that early steps would be taken to resume specie payments. I did not anticipate that so extraordinary a proposition as that of inflating the currency by adding to the outstanding legal tender notes, or by authorizing a further issue of National bank paper would be seriously made. In view of the purpose which has been indicated to enlarge the volume of paper of both descriptions, and to repudiate all attempts to re-establish the standard of specie — a policy, as I sincerely believe, fraught with widespread ruin to the industry of the country and with imminent danger to its credit — I invoke your interposition to contribute all in your power to prevent its adoption. Your opinion, representing, as you do, more largely than the Legislature of any other State the financial and commercial interests of the Union, should carry with it great weight.

The flagrant injustice of the proposed measure will be more apparent when you consider that, if adopted, without repealing the legal tender act, the result will be not only to depreciate the paper currency still further, but to compel its acceptance in payment of debt; thus openly violating the solemnly proclaimed pledge of the government five years ago to redeem its notes in specie 'at the earliest practicable period,' impairing the obligation of contracts, and consummating what the Constitution prohibits to the States as an act of moral and political turpitude.[h] To degrade the currency, and at the same time to compel the people to receive it as equivalent to specie, would be the most tyrannical exercise and abuse of financial power of which a civilized government has ever been guilty in time of peace. It differs in no essential respect, either under its moral or its practical aspects, from a degradation of the standard of specie by an adulteration of the national coin.

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[h] Const. U. S. art. 1, § 10, clause 1.

Five years ago the sense of rectitude would have revolted at the suggestion of such an act of public perfidy; but a persistence in wrong and injustice rarely fails to reconcile further wrong to the thought first and to the purpose afterward.

If, spurning away all the teachings of history and trampling under foot all the maxims of political justice, we adopt a policy as fraudulent as it is demoralizing, our successors will look back on our conduct with humiliation and shame.

The millions of depreciated and irredeemable paper, if issued as proposed, will, by a law of distribution which no human power can control, be poured into the city of New York to uphold and stimulate stock gambling, to glut the channels of industry, with false tokens of value, to embarrass all honest transactions of business, to cause reactions in the various departments of labor, by which the working classes are thrown out of employment, and to shake to its foundations the fabric of the public credit. Against the introduction of such an instrument of dishonor and calamity we should enter our solemn protest as we would against any other flood of contamination.

I speak with a clear understanding of the force of my words. I believe and trust you will concur with me in opinion that the emergency demands the plainest and most emphatic language. I therefore recommend such an expression on your part as may comport with the dignity of the Legislature, and as you may deem due to the interest of your constituents. I am not without hope that a timely declaration of your views, to be presented to Congress through the Senators and Representatives from this State, may arrest the torrent of disgrace and disaster with which the country is threatened from this source. If your protests and warnings are unheeded, you will have the consolation of reflecting, when the evil comes upon us, that no effort on your part has been spared to avert it.* [See note 11.]

JOHN A. DIX."

April 14. To the Assembly:

Veto of a bill entitled "An act to authorize the commissioners of highways of the towns of Guilderland and New Scotland, in the county of Albany, to lay out and open a certain highway extending in said towns of the width of not less than two nor more than three rods."

"The object of this bill is to connect two roads, which have long been used as highways, by another road two rods in width. The Revised Statutes, section 119, article 4, title 1, chapter 16, part 1, require that all public roads to be laid out by the commissioners of highways, of any town, shall not be less than three rods wide. This bill, therefore, provides for an exemption from the operation of the general law in a special case, upon grounds which would constitute an equal reason for extending the exemption to every other case in which a similar application should be made to the Legislature, and would open the door to a multitude of special acts of legislation. Indeed, it is understood that there are several cases in which similar applications will be immediately made if this bill becomes a law. The circumstances of this case, which have been made known to me, satisfy me that it should not be made an exception to the general rule.''

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* The Legislature on the 7th of April adopted the following concurrent resolutions:

WHEREAS, His Excellency the Governor of the State of New York has this day transmitted to both houses of the Legislature, a special message relating to the inflation of the currency by the general government, calling attention to the disastrous effect of such action upon the welfare and prosperity of the country, therefore be it

Resolved, That we fully affirm and heartily endorse the sentiments expressed in such message, and in view thereof, and of the act of Congress, approved March, eighteen hundred and sixty-nine, which affirmed that the faith of the United States was solemnly pledged to the payment in coin, of all the obligations of the United States not bearing interest (known as United States notes), and that 'the United States also solemnly pledged its faith to make provision at the earliest practicable period for the redemption of the United States notes in coin,' and as this pledge has been repeatedly given; it is the judgment of the Legislature of the State of New York, that it is the duty of the administration of the general government at Washington and of Congress to stay the pernicious and ruinous policy of increasing the volume of irredeemable paper currency, and be it further

Resolved, That our Senators and Representatives in Congress be and they are hereby requested, to resist by all efforts in their power, any inflation of the currency, through the further issue of circulating notes by the government or by national banks, and that they be and they are also hereby requested respectively to promote by all proper measures an early return to specie payment.

The bill was not passed over the veto.

April 21. To the Senate:

Veto of a bill entitled "An act to amend an act entitled 'An act to incorporate the Rochester Atheneum,' passed February 12, 1830."

'' This bill authorizes the Rochester Atheneum to change its name. Chapter 76 of the Laws of 1874, passed on the 24th of last month, enables that institution to do what this bill authorizes, and was designed to prevent applications to the Legislature for special acts of this description. The bill is therefore, entirely unnecessary, is in direct violation of the principle sanctioned by both branches of the Legislature to provide for special cases by general laws, and would be a useless incumbrance of the statute book. It is, therefore, respectfully returned.''

The bill was not passed over the veto.

April 22. To the Senate:

Veto of a bill entitled "An act to incorporate Howland College for the Education of young women."

'' The Legislature has conferred on the Regents of the University the authority to incorporate colleges and academies, and to prescribe the requisites and conditions therefor. They have adopted a system of general rules and regulations under which all the objects of this bill can be accomplished. Institutions incorporated by them have not only the general powers of a corporation under the Revised Statutes, but such further powers and privileges as they deem proper to confer. Their conditions are of the most liberal character, and at the same time are combined with such requirements as to insure the establishment of the institutions they incorporate on a stable basis, so as to avoid bringing into existence such as would be likely for want of a sufficient endowment, to die out after a feeble and languishing existence. All colleges, with one or two exceptions, whether incorporated by the Legislature or the Regents, are subject to the visitation of the latter, and it is very desirable that they should be created by the same authority. By leaving the application to be made to the Regents, the Legislature will maintain the position it has taken against special acts, the objects of which can be as well accomplished under general laws.

It is understood that the founders of this institution are prepared to establish it with a most munificent endowment; and it cannot be doubted that they will bestow it not less cheerfully when they are advised that by making their application to the Regents they will maintain inviolate a salutary principle of legislation."

The bill was not passed over the veto.

April 22. To the Senate:

Veto of a bill entitled "An act to incorporate St. Ann's Total Abstinence and Benevolent Society of Hornellsville."

"It is a source of regret that there should be any obstacle to the approval of a bill having for its object a cooperation in one of the most praiseworthy and essential reforms of the day, that I could not approve of it without giving my sanction at the same time to the principle of providing by special acts legislation for objects which can be accomplished under existing general laws.

The persons named in the first section may, under part 1, chapter 18, title 7, of the Revised Statutes, entitled ' Of benevolent, charitable, scientific and missionary societies,' carry out their meritorious purposes by filing their certificate in the manner therein specified and become a body politic and corporate, with all the privileges and powers conferred by the bill herewith returned."

The bill was not passed over the veto.

April 25. To the Assembly:

Veto of a bill entitled "An act for the relief of Catherine Seymore by conferring jurisdiction on the canal appraisers."

" The bill opens for examination and adjustment a claim for canal damages after the expiration of the time limited by law for presenting it for settlement. It belongs to a numerous class of cases, most of them without merit, and, by making a special exception to the general rule of law, gives to them all an equal title to the interposition of the Legislature on separate applications. Every statute of limitations carries with it cases of individual hardship, and it is possible that this may be one. But it seems to me impolitic, if not unjust, to provide for a single case and leave others of the same description unprovided for. If this application were to be successful, there is no doubt that the next Legislature would be flooded with others of a kindred character, and among them some which have been already denied. This view of the subject is concurred in by the Auditor of the Canal Department, whose opinion I asked and transmit herewith."

The bill was not passed over the veto.

April 30. The Legislature adjourned without day.

ACTION ON BILLS AFTER ADJOURNMENT OF THE LEGISLATURE.

August 27.

Veto of the following bills:

Assembly bill No. 824, entitled "An act to provide for the election of town officers and the transaction of town business in the towns of Phillipstown and Carmel, in the County of Putnam."

" This bill directs the election of town officers to be held by election districts in the towns of Phillipstown and Carmel in the county of Putnam. Appropriations for highway purposes are to be voted for at such district meetings, and all other business authorized by law to be performed at any annual or special town meeting is required to be transacted by the Board of Town Auditors."

Senate bill No. 294, directs the town of Hurley, Ulster County, to be divided into election districts for the election of town officers. All resolutions for any purpose, such as are usually submitted to a vote of the electors at the annual town meeting, are to be acted on at such district meetings.

Senate bill No. 313, directs the election of town officers in the town of Barre, Orleans County, to be held in separate election districts and authorizes all resolutions for town purposes to be acted on at such district meetings.

Assembly bill No. 738, directs town officers in the town of Mount Pleasant, Westchester County, to be chosen by election districts. Appropriations for highway purposes are to be made at such district meetings, and all other town business is to be transacted by the Board of Town Auditors.

" The effect of these several bills is to overthrow the established system of town government, and, in three of the five towns embraced in their provisions, to devolve the whole business of the towns, with the exception of appropriations for highway purposes, on the Board of Town Auditors. In these three towns the citizens are by the provisions of the bills deprived of all direct agency.

1. In the institution or defence of suits at law or in equity in controversies between such towns, and other towns, individuals or corporations;

2. In directing money to be raised for prosecuting or defending such suits:

3. In taking measures for the exercise of their corporate powers;

4. In establishing and maintaining pounds;

5. In establishing the compensation of fence viewers;

6. In making prudential rules and regulations for the better improving of all lands owned by such town in its corporate capacity whether common or otherwise;

7. For imposing penalties on persons offending against rules and regulations established by the town;

8. For applying such penalties as they may think most conducive to the interests of such town; and

9. For transacting other business of general interest.

All these important functions are devolved on the town auditors, and the citizens are deprived of all opportunity of making known their wishes and opinions through the public discussion, which is afforded by the existing system. It is in this respect a virtual disfranchisement of the electors in regard to nearly all the important interests of the town. The town meeting may be regarded as the germ of our system of popular government. It has been aptly denominated the Legislature of the town. The bills practically abolish it, and establish a *quasi* town government by districts. The general meeting in which all questions affecting the interests of the town can be canvassed, discussed and decided after careful consideration, is exchanged for neighborhood meetings in which no such general comparison of opinion is possible. In one town after trying this system for a few years the special act authorizing it was repealed.

My approval was given in 1873 to such bill under the erroneous impression that the peculiar local circumstances of the case justified it; but I am satisfied that it should have been withheld.

At all events it is quite manifest that such a change in the administration of the affairs of towns should be provided for, if it is deemed advisable, by a general law, and that there should be a uniformity in the provisions of such a law. The difference in the cases under consideration in regard to the manner in which town business is to be disposed of — in three by the town auditors, except appropriations for highway purposes, and in the other two by district meetings — shows the impolicy of conferring special powers on a few towns, when there are in the State over nine hundred which might with the same propriety ask for separate acts of the Legislature granting like privileges. If in any case a town is so large as to render attendance at a general meeting inconvenient to the inhabitants the proper remedy is to divide it and form a new town.''[18]

August 31.

Veto of Senate bill No. 198, entitled "An act to incorporate the Catholic Union of New York."

'' This bill confers powers which ought not to be granted to any private corporation however meritorious the objects in view of its creation. No period is limited in the charter for its duration, and it has therefore under the general laws of the State perpetual succession. One of the chief objections to the bill is the power conferred by the fourth section ' to make such a constitution and such by-laws and rules for the regulation of its business, the management of its affairs, the election, powers and duties of its directors, trustees, officers and agents as are not inconsistent with its charter and the laws of the State.'

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[18] The supervisors act of 1875, chapter 482, authorized town meetings by election districts, under regulations to be prescribed by the Board of Supervisors. The scope of the subject was enlarged and extended by L. 1893, chapter 82, which added a new section to the town law, and under which elections by districts were to be conducted by district officers chosen for that purpose.

The act of 1875, chap. 482, amended 1880, chap. 365; 1881, chap. 554; 1885, chap. 451, was sustained in Phillips v. Schumacher (1877), 10 Hun, 405; Re Church (1883), 92 N. Y. 1; Hubbard v. Sadler (1887), 104 N. Y. 223; Kirkwood v. Newbury (1890), 122 N. Y. 571.

Under this authority it is competent for the corporation to provide that its directors shall be elected by their own body as vacancies occur by expiration of their term of office or otherwise, thus making it a close corporation with perpetual succession. There is nothing in its charter and nothing in the laws of the State inconsistent with such a provision. The same power may be conferred on the trustees if it be thought advisable. There seems to be no limitation of this authority, except that the directors shall be composed of and chosen from members of the Council of the Catholic Union of New York.

An equally serious objection is that the amount of real and personal property it is authorized to hold is without limitation. It is an established policy of the State, rarely departed from, that corporations created for private benefit shall be limited in the amount of the property they may hold or the amount of their income or both. There is no limitation of either in this bill. The corporation may take, hold, sell and mortgage real or personal estate to the amount of millions of dollars. It may traffic in both to any extent and apply the proceeds to any purpose or object which may be thought conducive to the improvement of the temporal or social condition of those for whose benefit the corporation is created.

The general law authorizing associations for benevolent, charitable, scientific and missionary purposes, restricts the real estate they may hold to fifty thousand dollars, their personal estate to seventy-five thousand, and their income to ten thousand. It is in the highest degree unwise and unnecessary for any legitimate purpose of such a corporation to exempt it from all restrictions in these respects. It is no answer to this objection that the Legislature has heretofore by special act conferred such powers. The charter of an institution analogous to this in its objects restricted its annual income to fifty thousand dollars, its exemption from taxation to one hundred thousand dollars, and required its directors to be elected annually by its members by ballot. Its privileges were subsequently extended by very objectionable amendments. But it is no uncommon occurrence for a bad law to be passed in the hurry of legislation; and it is the more important that the precedent should be repudiated at the first attempt to repeat it.

Among the individuals named as corporators are many gentlemen distinguished for their talents and the purity of their character; and it is for this reason the more to be regretted that the charter should have contained provisions which render its approval inadmissible."

December 18.

Veto of the following bills:

Senate bill No. 46, entitled "An act to amend section 1 of chapter 346 of the Laws of 1844, entitled 'An act in relation to the foreclosure of mortgages,' passed May 7, 1844."

"A comparison of this bill with subdivision 3, of section 3, chapter 8, title 15, part 3 of the Revised Statutes, will show that the proposed amendment is unnecessary."

Senate bill No. 106, entitled "An act to provide for the payment of the costs, charges and expenses of opposing the discharge of Francis B. Edymoin from the Auburn State Prison, on writ of habeas corpus."

"There is no appropriation to meet the costs, charges and expenses designated in the bill. If there were, a vote of two-thirds would be required, whereas it passed by a majority of votes only."[1]

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[1] Const. 1846, art. 1, § 9.

Senate bill No. 109, entitled "An act designating the holidays to be observed in the acceptance and payment of bills of exchange, bank checks and promissory notes."[19]

" Chapter 261 of the Laws of 1849 designated certain holidays to ' be treated as is the first day of the week, commonly called Sunday.' These designated holidays were the first of January, the fourth of July, and the twenty-fifth of December, and one day appointed as a fast day, or Thanksgiving.

Chapter 370 of the Laws of 1870, added the 22d of February to the enumerated holidays, and provided that when either of these days should occur on a Sunday, the following Monday should be deemed a public holiday and bills of exchange, notes, etc., falling due on *such* Sunday or Monday, should ' become due and payable on the day following *such* Sunday or Monday.' Other Sundays, and holidays not falling on Sunday, were left subject to the commercial rule, by which bills of exchange, etc., becoming due on them were payable on the preceding day.

Chapter 577 of the Laws of 1873 added the 30th of May to be known as Decoration day, to the designated holidays, and provided that bills of exchange, etc., becoming due and payable, 1st on Sunday, 2d on any of the holidays before mentioned, and 3d on Monday, kept as aforesaid as a public holiday, should ' be deemed to be due and payable on the business day next succeeding the day of their maturity.' The omission of the word *such* in the act of 1870, made bills of exchange, etc., becoming due on any Sunday payable on the next preceding business day, thus reversing the established rule of commerce.

Chapter 639 of the Laws of 1873, amending the last-mentioned act, restored the commercial rule in regard to Sunday, except when one of the holidays enumerated fall upon it.

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[19] See the Statutory Construction Law, 1892, chapter 677, section 24, for a list of holidays.

This bill repeals all acts inconsistent with it, and was designed to make bills of exchange, etc., falling due on the enumerated holidays or on any Sunday payable on the preceding day. It was introduced with such a provision; but it was altered on its passage through the two Houses by substituting the word 'succeeding' for 'preceding,' and if approved would annul the act of 1873 as amended by the second act of that year.

Much confusion has arisen from these successive enactments and the various interpretations they have received. This bill if approved would add to it and establish a usage at variance with that of most commercial countries. It is, therefore, disapproved as unwise and vexatious."

Senate bill No. 140, entitled "An act for the relief of Hiram Buck."

"The following statement by the State Engineer and Surveyor explains the grounds of my disapproval of the bill:

'Lot No. 1 of the gore between Thurman's road patent and Hoffman township, in Warren county, containing 214 acres, was duly offered for sale October 24th, 1867, under the directions of the Commissioners of the Land Office, contained in a resolution passed by them on the 8th of June, 1867, and bid off at public vendue by Hiram Buck for the sum of $142.92, being the amount due the State thereon at the time of sale, viz.:

Principal	$94.32
Interest	46.10
Advertising	2.50
	$142.92

subject to the following conditions of sale: one-fourth part of the purchase money to be paid down at the sale or within 48 hours thereafter, and the purchaser to receive a conditional certificate that the lot is subject to be redeemed by the original purchaser thereof, or his assigns at any time within three months from the day of sale, but if the said lot is not redeemed, the purchaser shall complete the resale by surrendering the conditional certificate and executing his bond to secure the payment of the residue of said purchase money in six equal annual installments, with interest at 6 per cent.

Neglect or refusal to comply with the above conditions, subjects the purchaser to the forfeiture of the money paid down, and a penalty of $50 on each parcel or lot bid off, to be recovered with costs of suit.

On the 29th day of January, 1868, Hiram Buck paid into the treasury $35.92, as the first payment on said lot, and on executing a bond for $107, as the balance due the State, payable in six equal annual payments, interest at six per cent, delivered to Comptroller October 1, 1868.

Thereupon the State Engineer and Surveyor's certificate of purchase for said lot was issued in the name of Hiram Buck, dated October 24, 1867, being the day of resale, and, that the said premises have not been redeemed on the 25th January, 1868.

Extract from the minutes of the Commissioners of the Land Office, 26th February, 1869:

' Hon. Matthew Hale appeared before the board, and on behalf of Hiram Buck tendered payment of amount due the State in full for principal and interest upon lot No. 1, of the gore between Thurman's road patent and Hoffman township, purchased at the resale held by the State Engineer and Surveyor, October 24, 1867, and for which lot the certificate of sale of the State Engineer and Surveyor issued to said Hiram Buck, January 25, 1868.

Under date of August 12, 1868, Martin Vosburgh, Barret Van Benthuysen and Andrew Van Benthuysen filed a caveat against the issue of letters patent to Hiram Buck.

On motion the papers in the application with caveat were referred to the Attorney General.

L. O. Minutes, April 16, 1869.

The Attorney General to whom was referred the application of Hiram Buck for State title to lot No. 1 of the gore between Thurman's road patent and Hoffman Township, containing 214 acres of land, and the caveat of Martin J. Vosburgh and others against the same, reported back the papers therein; whereupon, on motion, it was

Resolved, That the State Treasurer be and he is hereby directed to receive from Martin J. Vosburgh, Barret Van Benthuysen and Andrew Van Benthuysen the amount remaining due the State and unpaid upon said lot, and that the amount paid into the State Treasury by Hiram Buck on account of purchase, under resale of October 24, 1867, be refunded to him, and his bond to the State for balance named therein be canceled and returned to him, the sale having been erroneously made.

Resolved, That upon presentation of the treasurer's receipt in full for amount due State upon said lot and the original surveyor-general's certificate of sale, which issued to Barent Van Benthuysen therefor, March 11, 1823, with assignments or proof of title to the satisfaction of this board, that letters patent issue to the persons entitled thereto, according to their interests in said lot.

L. O. Minutes 17th day of April, 1869.

Present: Wm. F. Allen, Comptroller; M. B. Champlain, Attorney-General; Van R. Richmond, State Engineer and Surveyor.

In the matter of the application of Martin J. Vosburgh, Garret Van Benthuysen and Andrew Van Benthuysen, for letters patent for lot No. 1, of the gore between Thurman's Road Patent and Hoffman township, on presentation of the surveyor-general's certificate of sale for said lot, issued to Barent Van Benthuysen, March 11, 1823, with assignments and proof of title made before the board by deposition of Abraham B. Van Benthuysen, and production of treasurer's receipt in full of amount due the State for principal and interest for said lot, it was, on motion,

Resolved, That letters patent issue to the following named parties for the number of acres of said lot named below:

To Garret Van Benthuysen for 60 acres.

To Andrew Van Benthuysen for 95⅓ acres.

To Martin Vosburgh for 58⅔ acres.'

P. S. The foregoing statement is confirmed by Comptroller Hopkins, and Judge Allen of the court of appeals, who was comptroller when the transactions referred to were under consideration."

Senate bill No. 174, entitled "An act to amend the charter of the village of Canajoharie, and to revise and consolidate the several acts relating thereto."

"There are several provisions of extremely doubtful propriety in this bill. Moreover, if signed, it will not go into effect until March, 1875. The Legislature will then be in session, and it must frame a general act for the incorporation of all villages under amendments to the constitution, to be submitted to the people of the State, at the general election in November next, if they are adopted."[20]

Senate bill No. 192, entitled "An act to amend an act entitled 'An act to vacate and amend an act entitled 'An act to incorporate the city of Yonkers,' passed June 1, 1872, passed January 28, 1873.'"

"The act is not properly described in the title."

Senate bill No. 208, entitled "An act to amend the charter of the Young Men's Catholic Association of Rochester."

"The object of the bill may be accomplished under chapter 35 of the Laws of 1874."

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[20] A constitutional amendment adopted in 1874, included a provision, article 3, section 18, prohibiting a private or local law incorporating a village.

Senate bill No. 217, entitled "An act to erect a portion of the village of Sidney Plains, in Delaware County, into a separate road district."

"No good reason is perceived for making this case an exception to the general law of the State in respect to the formation of road districts."

Senate bill No. 231, entitled "An act to amend the provisions of the Revised Statutes relative to the proof of wills."

"The Attorney-General is of opinion that this bill is unnecessary, and that the proof of wills, when all the witnesses are dead, is sufficiently provided for in the present statute. 2 R. S., page 59, old section 16, Laws of 1837, chapter 460, § 20."

Senate bill No. 236, entitled "An act supplementary to an act entitled 'An act for the incorporation of religious societies,'" passed April 5, 1813.

"The objects of this bill can be accomplished under the general law."

Senate bill No. 242, entitled "An act for the relief of James Baldwin, senior, of the town of Fort Edward."

"See my veto of a bill entitled, 'An act for the relief of Catharine Seymore,' sent to the Assembly, April 25, 1874." *Ante,* p. 673.

Senate bill No. 284, entitled "An act to incorporate the New York Warehouse and Railway Company, and to improve the commercial facilities of New York."

"The approval of this bill is urged by a large number of respectable business men in the city of New York, chiefly upon the ground that for want of sufficient facilities for the transshipment and storage of merchandise in the immediate neighborhood of the docks, the city is rapidly losing her ascendency as a national mart, while other cities better supplied with such facilities are enabled to carry on their commercial exchanges at cheaper rates, and are thus withdrawing from her a large portion of her legitimate trade. This fact has recently become well understood; for while the city has been lavishing millions upon the embellishment of parks, the construction of boulevards and opening streets and avenues for the benefit of uptown property holders in advance of the demand for such improvements, her docks, with the facilities necessary for the accommodation of her vast commerce, have been almost entirely neglected. It is natural that those who are suffering through a policy as mistaken in its purpose as it is disastrous in its result, should grasp at any project which holds out the promise of placing them on an equally favorable footing with their competitors in business in other cities. And yet it is believed that very few of them would have given this bill their approval if they had looked carefully into its details and calculated its probable consequences to the interest of the city and ultimately to their own. A statement of some of the leading objections to it can hardly fail to satisfy them that it ought not to become a law.

1. The first section creates a corporation with perpetual succession for the purpose of constructing a railroad, and confers upon it all the rights, privileges, franchises, and immunities incident to a railroad corporation formed under the general law. One of these rights is that of taking private property without the consent of the owner. The company is thus endowed with the right of eminent domain — the most objectionable of all forms in which power can be conferred by the Legislature on a corporation. Railroad companies in the interior of the State were clothed with this power from public considerations, and because they might be prevented from constructing their roads on direct

lines without submitting to gross extortion. But such a power is unnecessary in cities and ought never to be granted by the Legislature. The power is again conferred by the closing paragraph of the third section in terms, the purport of which cannot be mistaken.

Besides this power, the company is authorized by the third section to purchase property useful or necessary to carry out its objects and purposes, and again by the fourth section; and, as if this were not enough, the mayor, aldermen and commonalty of the city are authorized by the sixth section to acquire, sell and convey to the company in fee simple such real estate and property as may be necessary to carry out the objects and purposes authorized by the act — a provision as extraordinary in its purpose as it is indefinite in its scope.

2. The company is authorized by the fifth section to construct an elevated railroad, at least fifteen feet high, with four tracks, from a point at or near the Battery along the Hudson river to a point to be located by itself between 110th and 161st streets; thence to the Harlem river by a curved line; thence to and along the East river to the place of beginning. In case the railway is constructed upon arches, it is authorized to inclose them for warehouse or 'other' purposes. Under the alternative purposes there is no limitation to the uses to which these inclosed arches may be applied. Under the provisions of this section the city may be surrounded with an immense wall unlimited in its width, and unlimited in its height above fifteen feet, with cartways through it for access to the piers and wharves about half the width of a country road, and at the end of every street, a double cartway, of which the width is not specified. The immense labor of unloading and reloading ocean steamers, sometimes more than one at the same pier, at the same time, within the limited period often required to conform to the prescribed day of departure, would have to be performed through one of these narrow

openings, and thus, instead of improving ‘ the commercial facilities of the city,’ as the bill professes to intend, the company would become one of the most efficient instruments of delay, embarrassment and injury. The extent of the confusion, which it would create, may be conjectured by fancying the approach to the piers and wharves at the foot of Cortlandt or Canal streets on the Hudson, or Fulton street, on the East River, thus restricted, with a crowd of carriages, carts and pedestrians, contending for a passage through these contracted outlets.

3. Of the plans of the Commissioners of Docks for widening the streets next to the water, it has been said that when completed they would afford an opportunity of giving to the city ‘ not only the most imposing water front on the continent, but the amplest facilities for storing, transferring and handling freight of all kinds at the lowest possible cost.’ To obstruct this water front, as proposed by the bill under consideration, by a wall rendered impassable by closed arches, except by narrow openings to the piers and wharves, would be to sacrifice these facilities to a great extent for the benefit of a company organized for private profit; and as the eighth section authorizes the exaction of charges without any limitation of the rates, the benefits promised to commerce by the company could only be enjoyed on its own terms. The charter is so framed as to deprive the city authorities of all control over it. Indeed, it is expressly declared to be subject only to proper police regulations and to ‘ the special legislation ’ of the Legislature — another of the extraordinary provisions in which the bill abounds. It is a virtual declaration that, if the Legislature should deem it necessary for the protection of the interests of the State or the rights of individuals to pass general laws in regard to railroad corporations, this company shall be exempt from them — a declaration of no ordinary boldness at a time when special legislation is regarded as one of the most odious forms of misgovernment.

Such a railroad as the bill provides for has been suggested heretofore; but it should never be authorized completely independent of the control of the city authorities, or without requiring, if built on arches, that they should be left open so as to afford unobstructed access and egress to and from the docks.

4. Under section ten the company is authorized to construct one or any of three lines of railroad from river to river between One Hundred and Sixty-first and One Hundred and Tenth streets; the said lines may be elevated or depressed; they may, if elevated, consist of solid masses of storehouses as on the river lines; they may be constructed of any width, and exempt from all control by the city authorities.

5. The space along the rivers surrendered to the company is from seventeen to twenty miles in length, and without restriction as to the width to be occupied for the railroad with its arched warehouses. The value of the surface thus surrendered is variously estimated at from $20,000,000 to $30,000,000. The use of this surface in the manner provided for by the bill differs entirely from that of horse railroads. The latter leave the streets and avenues which they use entirely unobstructed, except at the moment when the cars are passing. The occupation by this company of the water front is a permanent obstruction guaranteed to it in perpetuity, to be used, after complying with the requirement to build a railroad, for any purpose which it may think most conducive to its private profit. And this enormous concession is made without compensation, except the contingent one of a payment of three per cent on any dividend it may make to its stockholders.

Such are a few, but by no means all of the objections to this monstrous scheme. The authority to construct piers and docks of its own, not exceeding ten in number, and to occupy any streets or avenues upon its route without compensation, whenever they shall be necessary for the construction or operation of the railroad, roadbed, turnouts, stations, side-tracks, switches or depots, is among the other extraordinary powers conferred upon it. I can regard it in no other light than a sacrifice of the commercial interests of the city and of its business classes to private gain. It is a striking example of the grossest abuse of the day in legislation — the creation of great corporations, and the surrender of the rights of individuals and the interests of municipalities for their special benefit. It is difficult to fancy a scheme more independent of all safeguards, more ingeniously framed to secure enormous profits to the shareholders, or more certain to impair the commercial interests and independence of the city.

The crowning assumption of the bill is to declare the company 'a public corporation,' equalizing it in rank with the government of the city, which is despoiled and made tributary to it; holding out the deceptive idea (to use the language of the courts), that 'the only interest involved is the public interest,' and aiming to evade legal liabilities, to which corporations created for private profit are subject."

Senate bill No. 289, entitled "An act to authorize the construction of a farm bridge over the Champlain canal, on the site of the old change bridge, in the town of Whitehall, in the county of Washington."

"The Champlain canal, where the bridge provided for in this bill is required to be built, is a part of Wood creek, a natural stream. The old change bridge was removed more than twenty years ago, before Stephen P. Rathbun bought the farm, and no reason is perceived why the State should build a bridge for his benefit."

Senate bill No. 294, entitled "An act to enable the electors of the town of Hurley, Ulster County, to vote by districts for town officers."

" For objections see Assembly bill No. 824." [See veto of August 27, *ante,* p. 674.]

Senate bill No. 299, entitled "An act providing for the building and maintaining of highways and bridges upon the Allegany Indian Reservation."

" This is clearly an appropriation of public money for a local purpose, and should have been passed by a two-thirds vote.[j] Besides, it directs the Comptroller to credit the county of Cattaraugus with all sums paid out for labor and material in building and maintaining certain highways and bridges. This would reduce the amount paid into the treasury under the annual apportionment of taxes to the county for State purposes, and would leave a deficit every year, to be supplied by subsequent legislation."

Senate bill No. 313, entitled "An act to enable the electors of the town of Barre, Orleans county, to hold their town elections in the separate election districts thereof."

" For objections see Assembly bill No. 824." [Veto of August 27, *ante,* p. 674.]

Senate bill No. 317, entitled "An act to legalize the acts of James H. Gilbert, as Notary Public."

" The usual saving clause as to suits or proceedings pending in the courts of the State is omitted."

Senate bill No. 327, entitled "An act to authorize the Sodus Point and Southern Railroad Company to erect docks and coal shutes adjoining its land on Great Sodus Bay, and granting to said company for that purpose, certain land under water."

" The Commissioners of the Land Office are authorized, by the Revised Statutes, to grant lands under the waters of navigable rivers or lakes. They have prescribed regulations for applications to obtain such grants, and these regulations ought, in all cases, to be complied with."

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[j] Const. 1846, art. 1, § 9.

Senate bill No. 333, entitled "An act to incorporate St. Joseph's College, Buffalo."

" The act of incorporation provided for by this bill may be obtained from the Regents of the University."

Senate bill No. 339, entitled "An act authorizing and empowering the County Treasurer of Orange County, to transfer the funds now in his hands, to the credit of the Ninety-first Regiment, New York State National Guard, to the credit of the Nineteenth Battalion, New York State National Guard."

" The moneys referred to in this bill belong to the State and should be returned to the treasury instead of being transferred to a battalion, which has had its quota of the public money.

Senate bill No. 342, entitled "An act to authorize the Corning Library to incur debt for the purpose of purchasing a site and erecting thereon a library building, and fixing the time of the annual election thereof."

" This bill is in direct violation of the policy of the law authorizing the incorporation of library companies, and for the express prohibition to create debt for any other than certain enumerated purposes. It is a special act exempting the Corning Library from the restriction in this respect, to which all other libraries are subject. It is also in express violation of a proposed amendment of the Constitution to be submitted to the people at the next general election, by which the Legislature is prohibited from granting to any private corporation, association or individual, any exclusive privilege, immunity or franchise whatever — an amendment which has been agreed to by two successive Legislatures."[k]

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[k] See Const. 1846, art 3, § 18, added 1874.

Senate bill No. 349, entitled "An act in relation to the power and jurisdiction of the special county judge and district attorney of Chenango county in certain cases."

" Unnecessary. See part 2, chapter 6, title 2, article 3, § 63 of the Revised Statutes."

Senate bill No. 353, entitled "An act to release the interest of the people of this State in certain real estate in the town of Newtown, Queens County, to Fritz Faenger."

" This bill required a vote of two-thirds.[1] It passed the Assembly by a majority only."

Senate bill No. 359, entitled "An act to alter the map or plan of the city of New York, by providing for the re-opening, extension, and opening of a part of Bloomingdale road and a certain public place in that portion of said city known as the village of Manhattanville."

"A part of the Bloomingdale road was closed by the Park Commissioners. The Court of Appeals has held that it is closed. This bill provides for re-opening it. No reason of a public nature sufficiently important to warrant such a measure, or for creating a public place at Manhattan street, is apparent."

Senate bill No. 365, entitled "An act for the relief of Mary G. Ramsey by conferring jurisdiction on the canal appraisers."

" The damages, for which relief is claimed, is stated by the Canal Commissioners to have been caused by the incompetency of the crew of the injured boat. It cost the State $873.39 to repair the break in the aqueduct caused by the mismanagement of the boat, and it is estimated that the State lost $15,000 more by the suspension of navigation. There is no reason why the State should pay for the damage to the boat, which has caused the injury."

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[1] Const. 1846, art. 1, § 9.

Senate bill, not printed, entitled "An act to amend an act, entitled 'An act for the incorporation of villages,' passed December 7, 1847, so far as relates to the village of Corning, in the county of Steuben."

"Both sections of the bill are of doubtful propriety."

Senate bill, not printed, entitled "An act in relation to the transfer of the Sinking Funds to pay the bonds issued for the Washington park in the city of Albany."

"There was a mistake in framing this bill, which renders it undesirable to the city authorities. It is, therefore, disapproved."

Senate bill, not printed, entitled "An act to change the name and to amend the charter of the New York Orthopoedic Dispensary."

"The title does not conform to the requirements of the Constitution.* The bill authorizes the corporation:

1st. To change its name;

2d. To hold an additional amount of real and personal property; and,

3d. To hold said property exempt from taxation."

Senate bill, not printed, entitled "An act to amend an act entitled 'An act to incorporate the Ulster Female Seminary,' passed April 22, 1867."

"There are four academies in the State created with sole corporators. The objection to all these cases is that the property is not devoted to public education. They seem to be private schools, and yet the incorporation confers on them exemption from taxes and the right to participate in the public funds."

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* Const. 1846, art. 3, § 16.

Assembly bill No. 151, entitled "An act to incorporate the New York Rapid Transit Company, and to provide a comfortable, safe and speedy system of cheap and rapid transit through the city of New York."

"It is to be regretted that there are provisions in this bill which render it impossible for me to approve it, as the 'system of cheap and rapid transit,' for which it provides, is believed by men of experience and practical knowledge of engineering to be feasible.

The 6th section authorizes the company to take real estate without the consent of the owner — a power, which ought not to be delegated by the Legislature to a railroad corporation in a city, and which should never be exercised unless absolutely necessary to the accomplishment of a public object. The same right is conferred on the company by the 3d section.

My approval was withheld from a similar bill passed by the Legislature of 1873, on account of objections, not removed by this bill, which contains new provisions equally objectionable. The company is authorized to cross Broadway twice. The common council is authorized to change the extension of the designated route to go through any other streets or avenues; but it has no other control over the construction or operations of the company.

The company is authorized to occupy certain streets and avenues and to make openings and excavations in them for its stationary engines, by which the road is to be operated. For all these privileges the company is exempt from any contribution to the city as a compensation for them, and is thus made an exception to the rule adopted by the Legislature of 1873 in respect to city railroads, and enforced by the Legislature of 1874."

Assembly bill No. 201, entitled "An act to amend an act entitled 'An act to provide for the Eastern Boulevard in the city of New York, and in relation to certain alterations of the map or plan of said city, and certain local improvements in connection therewith to amend chapter 626 of the Laws of 1870,' passed May 16, 1873."

"It is not clear that this part of Fifty-seventh street is not now included in the boulevard under the act of 1870. If not, it ought not to be added as proposed by this bill, as it is not provided that the work shall be done by contract, and as it will add to the already heavy debt of the city."

Assembly bill No. 212, entitled "An act to alter the commissioners' map of the town of Bushwick, now city of Brooklyn."

"The common council have power, under the charter of 1873, to close the streets named in this bill."

Assembly bill No. 253, entitled "An act to amend the Revised Statutes, in relation to laying out public roads and the alteration thereof."

"This bill gives to eight freeholders the right to decide whether it is necessary to lay out a new road or alter a road, instead of requiring a jury of twelve freeholders to make a certificate that it is necessary. It is an amendment of very questionable propriety."

Assembly bill No. 268, entitled "An act to authorize the Brooklyn City Railroad Company to extend their roads on and along Greene and Gates avenues; also, through Putnam and Marcy avenues, in the city of Brooklyn."

"The property holders on Gates avenue, between Fulton and Franklin avenues, are nearly unanimous in protesting against this bill. It does not appear that there is any public convenience in its favor sufficiently strong to overbalance what seems to me their well-founded objection to it.''

Assembly bill No. 279, entitled "An act to authorize the Canal Board to adjust the claim and settle with Sidney Seeley for extraordinary labor performed and materials furnished on the Champlain canal."

'' This bill provides for a case of individual hardship, which cannot be remedied without violating a principle.''

Assembly bill No. 281, entitled "An act to amend chapter 787 of the Laws of 1873, entitled 'An act to amend chapter 863 of the Laws of 1867, entitled An act to construct a bridge over Tonawanda creek, in the counties of Erie and Niagara, and to provide means therefor,' passed June 18, 1873."

'' The act of 1867, which this bill amends, appropriated $8,000 of the moneys appropriated for extraordinary repairs of the canal to aid the construction of this bridge, and $6,000 was authorized to be raised from each of the towns of Tonawanda, in Erie county, and Wheatfield, in Niagara county. Chapter 787 of the Laws of 1873, amended the act of 1867, without interfering with its general purpose. This bill amends the last-named act by throwing the expenses to be borne by the towns of Tonawanda and Wheatfield on the towns at large in the counties of Erie and Niagara. The improvement is local, and one in which few of the towns in Erie county have any interest, and it seems unjust that they should bear any part of the burden of providing for it.''

Assembly bill No. 290, entitled "An act relative to fines received by town officers in the county of Oneida, in cases of misdemeanors."

'' Some of the fines embraced in this bill are payable to the overseers of the poor under existing laws; and it is not deemed proper to interfere with this appropriation of them.''

Assembly bill No. 296, entitled "An act authorizing Edward D. Van Slyck to file in the office of the canal appraisers a statement of his claims for canal damages and directing the canal appraisers to hear and determine the same."

"See my veto in the case of Catharine Seymore sent to the Assembly on the 25th of April last." *Ante,* p. 673.

Assembly bill No. 323, entitled "An act to enable the trustees of school district number thirty-five of the town of Owego, Tioga county, New York, to acquire title to, and hold certain lands for cemetery purposes, add thereto by purchase, and have the care, supervision and management thereof."

"There is no congruity between the functions of the trustees of a school district, and the trustees of a cemetery, and it is far better that they should be performed by different persons."

Assembly bill No. 336, entitled "An act to reduce the rates of ferriage on certain ferry routes, between the city of New York and the seventeenth ward of the city of Brooklyn, and to establish rates of ferriage thereon, and to regulate the running of said ferries."

"It is represented to me by the owners of large establishments at Greenpoint, employing hundreds of workmen, who use one of these ferries, that it could not be maintained if the rates of ferriage were reduced as proposed by this bill, and that a failure to execute heavy contracts would be the consequence. Besides, the common council of the city of New York has the power to fix the rates of ferriage, and can judge what the public convenience and interest require."

Assembly bill No. 340, entitled "An act to incorporate the Ausable Valley Masonic Hall and Library Association."

"The association created by this bill can be incorporated under the general law."

Assembly bill No. 357, entitled "An act to repeal section 20 of chapter 229 of the Laws of 1870, entitled 'An act to organize and establish a police for the city of Schenectady.'"

"This bill is objected to by the mayor, the common council, other officials, and a large number of citizens as detrimental to the interests of the city. With this opposition, I do not think the bill should become a law."

Assembly bill No. 369, entitled "An act for the relief of Orrin Harris, by conferring jurisdiction on the canal appraisers."

"See my veto in the case of Catharine Seymore." [April 25, *ante,* p. 673.]

Assembly bill No. 394, entitled "An act for the relief of William Wilson."

"See veto in the case of Catharine Seymore. [April 25, *ante,* p. 673.] One of the reasons assigned for opening this case is, that the canal appraisers, by their clerk, informed the claimant that his claim was on file in time. It does not so appear by the correspondence."

Assembly bill No. 424, entitled "An act authorizing the board of canal commissioners to settle for work done and expense incurred for doing work east of military road, and from the east side of state ditch culvert in Tonawanda, to the first change bridge west of said culvert on the Erie canal."

"The auditor of the canal department strongly opposes the reference of claims for extra work, etc., to the canal commissioners. I entirely concur in his opinion, and think that they should take the usual course — be referred to the canal board for examination and adjustment."

Assembly bill No. 442, entitled "An act to provide for the improvement of Tompkins square, in the city of New York."

"The commissioners of the department of public parks have power to make all necessary improvements in the public parks, of which Tompkins square is one. The effect of this bill will be to deprive the national guard of the only square where their military exercises can be conducted. It is, therefore, desirable that the proposed improvement should be postponed until some other parade ground for the national guard of the city is provided."

Assembly bill No. 445, entitled "An act repealing chapter 227 of the Laws of 1872, so far as the same affects lands in the town of Newcomb, Essex County."

"Under chapter 817, Laws of 1866, the non-resident highway taxes on certain townships was appropriated 'to lay out and construct a road from the river road in township number fourteen (14) in the town of Johnsburgh to the Carthage road, near the head of Long Lake, in the county of Hamilton.' One of said townships was 'township 18,' in the 'town of Newcomb, Essex county.'

This act was amended by chapter 796, Laws of 1868, and again by chapter 227, Laws of 1872, under both of which amendments the non-resident highway tax on said 'township 18, town of Newcomb, Essex county,' continued to be appropriated the same as in the original law.

If it was the intention of this act to except the non-resident highway tax of township 18, town of Newcomb, Essex county, from the appropriation to lay out and construct the road above mentioned, it should have repealed not only 'chapter 227, Laws of 1872,' but 'chapter 796, Laws of 1868, and chapter 817, Laws of 1866,' so far as the same affect lands situated in the town of Newcomb, Essex county, New York."

Assembly bill No. 465, entitled "An act to change the name of and for the relief of 'The Brooks Locomotive Works.'"

"The object of this bill can be effected under an act passed at the last session of the Legislature."

Assembly bill No. 466, entitled "An act to incorporate 'The Ithaca Company.'"

"The leading objections to the bill are as follows:

1st. A body corporate and politic is created with perpetual succession. The company is authorized to organize when the full amount of its capital ($100,000) is subscribed and it may commence business before any part of the capital is paid in.

2d. It is authorized to establish and carry on manufacturing and 'industrial' pursuits in the town of Ithaca. The term 'industrial' comprehends nearly every species of productive labor which can be conceived, and the power is thus conferred on the company of engaging in an endless variety of occupations, and of entering into competition with private individuals, in the vocations from which they derive their subsistence. It is against the policy of our laws to create corporations with powers so indefinite. Aggregations of capital with corporate powers have great advantages for those who furnish them, and oftentimes for the community, by enabling objects of utility to be accomplished to which the means of a single individual would be inadequate. The manufacturing act, as it is usually called, has been most liberally amended by the Legislature by extending its provisions to a large number of industrial purposes. But the associations formed under it are limited to a single object. A company may be formed to keep a hotel, to bottle mineral water, or to make wine, but one company cannot embrace all these objects in its operations. This bill is in direct conflict with the policy of the government in respect to private corporations, and it is hardly to be supposed that it would have received the sanction of the Legislature if its scope had been distinctly discerned or carefully considered.

3d. In addition to these extensive powers, it may loan money, borrow money, become a partner in manufacturing and industrial pursuits under the management of other corporations, and manage any manufacturing enterprise owned by other corporations or individuals. In short, it may do anything in the way of productive labor not forbidden by law.

4th. It may lease, purchase, hold and convey real estate to an unlimited amount, provided only that it be necessary or 'convenient' for the conduct of its business, which, as has been seen, may embrace any pursuit in the broad and diversified field of productive industry."

Assembly bill No. 477, entitled "An act in relation to the application of highway assessments of corporations in the town of Glenville, Schenectady county."

"No good reason is perceived for paying over any portion of these moneys to the supervisor, or for making this case an exception to the general law of the State."

Assembly bill No. 481, entitled "An act to confirm the proceedings of the annual town meeting of New Hartford, Oneida county, held March 3, 1874, relative to reimbursing the collector or his sureties."

"This bill intended to confirm the proceedings of an annual town meeting, but does not provide for such confirmation."

Assembly bill No. 518, entitled "An act to repeal so much of chapter 817, Session Laws of 1866, and of chapter 796, Session Laws of 1868, and of chapter 227 of Session Laws of 1872, as may exempt townships number 35, 36, 40 and 41 of Totten and Crossfield's purchase, from any of the provisions with regard to highway taxes of said townships, together with the highway taxes of townships number 5 and 39 of same purchase, to the uses and construction of the Carthage road from Long lake to Beach's lake, now called Lake Brandreth, in Hamilton County."

"This act repeals so much of chapter 817, Laws of 1866, chapter 796, Laws of 1868, and chapter 227, Laws of 1872, as appropriates the non-resident highway taxes assessed on townships 35, 36, 40 and 41 of Totten and Crossfield's purchase, ' to lay out and construct a road from the river road, in township 14, in the town of Johnsburgh, to the Carthage road, near the head of Long lake, in the county of Hamilton,' and *appropriates such taxes,* together with those assessed on townships 5 and 39, of the same ' Purchase,' to the ' use, reconstruction and improvement of the Carthage road and its bridges, between creek of the outlet of South pond, near the head of Long Lake and Lake Brandreth, in township 39.'

The intention of the act is not expressed in its title.[m] Section 3 requires the Comptroller to pay over annually to the commissioners of said road all such (highway) taxes as may be *assessed* upon the lands in said townships. As many of the lands on which such taxes are assessed are so imperfectly described that the Comptroller is obliged to reject and return to the county the taxes *assessed* thereon, the law should only appropriate such as may be *admitted* by him.

Section 4 requires the commissioners to file their bonds for the faithful performance of their duties, with the County Treasurer, and to report the work done and an exhibit of expenditure of money made, annually to him. The County Treasurer is given no power or authority except to *receive* such bonds and reports. The bonds and reports *should* be made to Comptroller, who should be given authority to withhold the appropriation in case such bonds and reports should not be satisfactory."

Assembly bill No. 534, entitled "An act to extend the boundaries of the village of Dansville."

"A large number of the persons, whose property is embraced in the enlarged boundaries of the village as proposed by this bill, protest in the most earnest manner against it. I see no public reason for annexing them to the village against their wishes and remonstrances. Their opposition has been well known from the moment they were advised of the intended arrangement, and no just cause has been assigned for overruling it."

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[m] Const. 1846, art. 3, § 16.

Assembly bill No. 552, entitled "An act to amend an act entitled 'An act to incorporate the Peoples' Water Transit Company,' passed April 23, 1873."

"The council of the city of New York have power to establish ferries. If the franchise is a valuable one, compensation should be made for it. The act of 1873, incorporating the Peoples' Water Transit Company, authorized it to establish a ferry on the North River. This is an entirely new grant. It authorizes the company to establish a ferry on the East River, and it ought not to be granted without the approval of the city authorities."

Assembly bill No. 565, entitled "An act to exempt property, real and personal, of the Society of the New York Hospital from taxation."

"All the property, real and personal, of the society, is by this bill exempted from taxation, so long as it is used exclusively for the purposes of the society. This was not, it is believed, intended, the object being to exempt the property 'occupied' in the city."

Assembly bill No. 566, entitled "An act authorizing and requiring the inspectors of State prisons to hear and determine upon the claims of the legal representatives of Thomas D. Gilson, deceased, and to allow such compensation therefor, as they may deem just and equitable."

"If there had been a legitimate claim to compensation for extra services, it should and could have been adjusted at the time."

Assembly bill No. 567, entitled "An act to authorize the lighting of public streets and avenues in the village of Matteawan, in the town of Fishkill, county of Dutchess."

"The authority conferred by this bill seems to be already possessed under the general law, if the village has been incorporated. If it is not an incorporated village, the bill is defective, for in legal parlance a mere collection of dwellings, without some act of incorporation, cannot properly be called a village. The words, 'in the village of Matteawan,' might perhaps be treated as surplusage, and the lamp district might be considered as legally established in the town of Fishkill. But it is an example of loose legislation, which ought not to be sanctioned. The village may be incorporated under the general law, and the trustees may provide for the object in view of this bill under § 3, sub. 10, title 3."

Assembly bill No. 568, entitled "An act to incorporate the village of Salamanca, in the county of Cattaraugus." [21]

"It is matter of serious doubt whether a village can be incorporated in this Indian reservation without infringing on existing laws and Indian treaties. The Indians contest the right. It is deemed advisable, under these circumstances, to leave the inhabitants to organize under the general law, if they think proper to do so, instead of giving them a special authority by act of the Legislature."

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[21] An act of Congress, passed February 19, 1875, chapter 90, authorized the president to appoint commissioners to survey several villages on the Allegany and Cattaraugus Indian Reservations, including the village of Salamanca. The act extended to such villages the municipal laws of New York, except that Indian lands could not be taxed. The act provided for leasing Indian land for terms of twelve years, and for their renewal for like periods at the option of the lessee. Another act passed September 30, 1890, authorized renewals for terms not exceeding ninety-nine years.

The State Law passed in 1881, chapter 188, defined the status of Indian leases within the villages surveyed under the act of Congress, and declared the leasehold estates in such Indian lands to be freehold estates. The act legalized proceedings under State law for the incorporation of such villages, also proceedings relating to the erection of school districts, and proceedings generally by municipal officers. This subject was afterwards included in the Indian Law, L. 1892, chap. 679.

Assembly bill No. 640, entitled "An act to authorize David MacGuire to erect a dock or wharf in the Hudson River, in the town of Philipstown, adjoining his lands."

"No grant of this nature should be made except on application to the Commissioners of the Land Office in the manner required by the Revised Statutes and in compliance with their regulations."

Assembly bill No. 641, entitled "An act authorizing Louis Hummel to build a dock in the waters of Jamaica bay, in the town of Hempstead, Queens County."

"No such authority should be given except on application to the Commissioners of the Land Office as provided for by law, and in conformity to their regulations."

Assembly bill No. 644, entitled "An act to amend an act, entitled 'An act to regulate the ferries between the city of Troy and the village of West Troy,' passed April 15, 1854."

"The title of the bill does not correctly state its object."[n]

Assembly bill No. 663, entitled "An act to alter the map or plan of the city of New York, by extending Lewis Street."

"This bill provides for the extension of Lewis street, passing through and destroying several valuable buildings, among them the Novelty Works and the Morgan Iron Works. The board of street openings possess the authority to effect the object of the bill, and can exercise it whenever the interest of the city requires it."

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[n] Const. 1846, art. 3, § 16.

Assembly bill No. 664, entitled "An act to provide for the support and maintenance of prisoners confined upon civil process."

"This bill makes no distinction between prisoners who are able to support themselves and those who are not. To make the support of the former a county charge is most unjust to the taxpayers, and would be in other respects of evil tendency."

Assembly bill No. 665, entitled "An act to provide a lease of certain property to the North Eastern Dispensary in New York city."

"The Commissioners of the Sinking Fund are directed to make the lease. They are left without any discretion in regard to it."

Assembly bill No. 727, entitled "An act to enable the trustees of the village of Clyde, in the county of Wayne, to raise by tax the sum of $7,000 and interest, wherewith to pay the indebtedness existing against said village, and the ordinary expenses thereof for the current year, and to amend an act entitled 'An act to incorporate the village of Clyde, in the county of Wayne,' passed May 2, 1835."

"This bill is in direct violation of section 16, article 3 of the Constitution of the State, which provides that no private or local bill shall embrace more than one subject. It authorizes, 1st, a tax of $7,000 to be raised; and 2d, it repeals section 7 of the charter of the village, which provides that certain lands shall not be taxed for the benefit of the village."

Assembly bill No. 728, entitled "An act in relation to the use of the telegraph for public purposes in the city of New York."

"Not asked for by the city authorities and believed to be unnecessary."

Assembly bill No. 731, entitled "An act to provide for the repair of the bridge over the Allegany river, on the Allegany reservation, at Vandalia, in the town of Carrolton, Cattaraugus County."

"This is clearly an appropriation for local purposes and can only be made by a vote of two-thirds."[o]

Assembly bill No. 738, entitled "An act to provide for the election of town officers and the transaction of town business in the town of Mount Pleasant, in the county of Westchester."

"For objections see Assembly bill No. 824." [August 27, *ante*, p. 674.]

Assembly bill No. 742, entitled "An act authorizing the commissioners of highways in the town of Livonia, in the county of Livingston, to lay out and open a certain highway in said town of the width of two rods."

"The general law forbids a public highway to be laid out less than three rods wide. This is a special act, and of the same character as one disapproved by me during the session of the Legislature." [See veto message, of April 14, *ante*, p. 670.]

Assembly bill No. 762, entitled "An act to amend chapter 308 of the Laws of 1857, entitled 'An act relative to the foreclosure of mortgages by advertisement,' passed April 9, 1857."

"The affidavit of the successor of the clerk, with whom the notice was originally filed, is believed to be competent under existing laws. The Attorney General is of opinion that the amendment proposed by the bill would tend to raise a doubt on this point, and might unsettle existing titles."

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[o] Const. 1846, art. 1, § 9.

Assembly bill No. 769, entitled "An act to amend an act entitled 'An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes,' passed February 17th, 1847."

"There is no act of February 17, 1847, with the above title, and therefore nothing amendable under this bill."

Assembly bill No. 774, entitled "An act to amend an act entitled 'An act to simplify and abridge the practice, pleading and proceedings of the courts of this State,' passed April 12th, 1848."

"This bill was submitted to the Attorney General for his opinion, in which the various provisions are considered, and which closes with the following paragraph:

'I have thus hastily gone over the various amendments to be made to the Code, and in my opinion they are all, or very nearly all either unnecessary, or positively wrong, and if they should become law, the practice of the courts, instead of being improved, would be decidedly worse than it now is.'

His opinion is concurred in."

Assembly bill No. 790, entitled "An act to release the title and interest of the State of New York to certain real estate situate in the town of Warsaw, to the Wyoming County Agricultural Society."

"This bill conveys to the Wyoming County Agricultural Society a lot of land purchased by the State for military purposes. It is now enclosed and used by the society, but there is a possibility that it may be needed for public use. While such a possibility exists the State ought not to be divested of its title."

Assembly bill No. 868, entitled "An act to constitute and create school commissioners district of the city of Yonkers, in the county of Westchester."

"It is the opinion of the superintendent of public instruction that instead of making a separate commissioner's district out of these school districts, it would be better to consolidate them into one union district, under the provisions of the general law (title 9, chapter 555, Laws of 1864)."

Assembly bill No. 894, entitled "An act to amend section 67 of article 2, chapter 1, part 2, title 2 of the Revised Statutes."

"There are trusts, the continuance of which is limited by the duration of certain specified lives and not by any other contingency. If such lives were to continue in existence more than twenty-five years these trusts would cease and determine at the end of that period, and might work great inconvenience and injustice, in case this bill should become a law."

Assembly bill No. 898, entitled "An act to authorize the leasing of the armory in the city of Schenectady to Union University."

"The arsenal and armory building is not needed by Union University and is needed by the State."

Assembly bill, not printed, entitled "An act to provide for aiding in building a bridge over the Genesee Valley canal and the Allegany river, in the town of Portville, Cattaraugus county, and to make an appropriation therefor."

"This bill, if approved, would be inoperative. The fund from which the appropriation is to be paid is not designated. The bill should have directed the Treasurer to pay, on the warrant of the Comptroller, the amount specified out of some specific fund, or out of any moneys in the treasury not otherwise appropriated. The payment might have been required to be made by the Auditor of the Canal Department, and in that case a specific fund should have been designated."

Assembly bill, not printed, entitled "An act to relieve the Second Baptist Church of Harlem, in the city of New York, from an assessment of $1,600 for opening and extending Lexington avenue, from One Hundred and Second street to Harlem river."

"See Assembly bill No. 549, relative to the vestrymen of the Church of the Resurrection." *Post,* p. 711.

Senate bill No. 33, entitled "An act to regulate the sale of poisons and to repeal chapter four hundred and forty-two of the Laws of eighteen hundred and sixty-two."

"This bill is intended to regulate the sale of poisons, and while it repeals by the sixth section two existing laws, it excludes the city of New York from its operation by the 5th section. If the 5th and 6th sections had been reversed, it might bear a different construction, but as the bill is framed it seems to leave the city of New York unprotected. The board of health of the city concurs in this interpretation of the provisions of the bill. Even if there is ground for a difference of opinion, with this doubt the bill ought not to become a law."

Assembly bill No. 260, entitled "An act to amend an act entitled 'An act to amend chapter 467 of the Laws of 1862, entitled 'An act to prevent the adulteration of milk and prevent the traffic in impure and unwholesome milk,'" passed May 2d, 1864."

"The Board of Health in the city of New York and the American Dairymen's Association deem this bill objectionable. The latter is of opinion that a legal sanction of the use of ice, which is not necessary in the transportation of milk to market, may open the door to dilution *ad libitum.* Both concur in opinion that the sweeping condemnation of substances in a state of fermentation is wrong. The Board of Health says: 'This would make it a crime to feed to cows the exhausted brewer's grains, which now constitute an important element of cattle food in the neighborhood of large cities. Many persons consider these grains unwholesome, but a few years ago I' (the President of the Board of Health) 'made the subject a careful study and satisfied myself that as these grains are practically used in the great cow stables, they are not in any way objectionable, and I think it would be a great hardship to the farmer to forbid their use, and that no good to the public would result from it.'

The bill was probably drawn to reach objects which are not clearly shown, and it should be more carefully framed by a future legislature, if any amendment to the existing law is needed."

Assembly bill No. 549, entitled "An act to reimburse and relieve the rector, church wardens and vestrymen of the Church of the Resurrection, in the city, county and State of New York, in respect to certain assessments upon real estate formerly owned by them in the city of New York."

"This case is unquestionably a very hard one, and I should sign the bill, if it were not a special act of legislation of the worst character. The legislature has thought proper to provide that churches shall not be exempt from assessments for public purposes. There are hundreds of churches in the city liable to the burden imposed upon this; and the precedent established by the bill is calculated to lead to special acts of the Legislature in other cases to afford the same relief. Indeed, there is another of the same character now before me, and I cannot approve one without approving the other. These cases can only be provided for by private contribution."

Assembly bill No. 867, entitled "An act to authorize the confinement of convicts in the penitentiaries of this State."

"There are six penitentiaries in the State. Four of them are now open to the reception of convicts on terms similar to those provided for in this bill. The other two are in the cities of Albany and New York. The superintendent of the Albany penitentiary does not want this bill. He is willing to receive able-bodied convicts without any compensation, and makes a profit of about $70 per annum each from their labor. The whole compensation provided by the bill would, therefore, be a gratuity to the county receiving convicts under it. The United States pays $1.25 a week for supporting in the Albany penitentiary persons convicted under its laws. This bill should be framed with a regard to the interests of the whole State, and not, as now, with reference only to the interests of the county receiving convicts. As now framed, its effect would be to throw the expense of supporting these convicts on all the counties of the State, except those in whose penitentiaries they would be imprisoned."

Senate bill No. 325, entitled "An act to consolidate the bonded debt of the late town, and of the city of Yonkers, and authorizing the city of New York and city of Yonkers to issue bonds for that purpose."

"The main purpose of this bill was to consolidate the bonded debt of the late town and of the city of Yonkers by an arrangement, which is considered essential to the convenience of the city and its creditors, and to which no exception can be taken. If the bill had made provision for this object alone, it would have been entirely free from objection. But it provides for another object entirely unessential to that arrangement and affecting injuriously the city of New York.

By Chapter 613, of the Laws of 1873, annexing to the city of New York the towns of Morrisania, West Farms and Kingsbridge, in the county of Westchester, the city was made to assume the debts of those towns. The debt of the last named town thus assumed amounted to $173,011, and was payable in annual installments, not exceeding $15,000 in any one year. Section 2 of the bill under consideration provides that the Comptroller of the city of New York shall issue bonds of the said city of New York to an amount equal to that portion of the bonded debt of the late town of Yonkers, apportioned and chargeable to the late town of Kingsbridge, etc. The same section further provides that such bonds shall be dated on the 1st day of April, 1874, and shall bear interest at the rate of seven per cent per annum, payable semi-annually on the first days of April and October in each year, and shall mature in amounts as may be determined by the Comptroller of the city of New York, not exceeding $30,000 in any one year, commencing with the year 1894.

The effect of these provisions is to prevent the city of New York from liquidating the debt assumed for the town of Kingsbridge, by annual installments, commencing with the year 1874, to postpone the payment of the whole debt to the year 1894, and to compel the city to add the amount to its funded debt, no part of which can be paid for the next twenty years. To this change the financial officer of the city of New York strongly objects, and it appears to me on just grounds. The debt of the city is already so large that no addition to it should be made without absolute necessity; and it is far better that the moderate installments now provided for should be paid by levying the amount in each year by taxation. Under this mode of payment more than $139,000 of the Kingsbridge debt will be paid by the year 1894, leaving only about $34,000 to be subsequently provided for, whereas, under the bill, the whole amount would be outstanding in that year, and the city would, during the intervening twenty years, be compelled to pay interest on it at seven per cent.

It seems to me that this arrangement is exceedingly unjust to the city of New York, and that it ought not to be enforced against the remonstrances of its financial officer.

Since the bill passed the Legislature, one of the payments on the Kingsbridge debt has been made, amounting to $17,120.58, reducing the principal of the debt to about $165,000. A previous payment of $4,000 had been made, so that the amount of principal outstanding is about $161,000.

The fourth section of the bill authorizes the Common Council of the city of Yonkers to exchange the bonds to be issued under the second section by the city of New York for certain bonds of the late village and town of Yonkers and of the city of Yonkers, 'dollar for dollar,' and in a certain contingency to sell the former. As the seven per cent bonds of the city of New York are worth about five per cent more than their nominal value, and the bonds, for which they are authorized to be exchanged, are not worth more than par, it would be practically a donation of about $8,000 to the city of Yonkers at the expense of the city of New York — an arrangement altogether inconsistent with equal justice between them. It is entirely irrelevant to the main purpose of the bill — 'to consolidate the bonded debt of the late town and of the city of Yonkers' — and ought not to have been included in an act of legislation to provide for that object. Indeed, the two objects are so diverse that it may be fairly questioned whether the bill is not in conflict with the sixteenth section of the third article of the Constitution, which prohibits the legislature from passing any local bill embracing more than one subject.

It is greatly to be regretted that the bill should have been passed in this shape; but the legislature will be in session in a few months and it can be re-enacted without the provisions which have been objected to, and with no other inconvenience than that of postponing the new financial arrangements to another year."

Senate bill No. 288, entitled "An act to regulate the appointment, powers and duties of certain engineers in the city of New York."

"If there were no other objection to the bill, the fact that the title does not express the subject, as required by the Constitution,[p] would be fatal to it. While professing to regulate the appointment, powers and duties of certain engineers, its real purpose is to amend the charter of the Metropolitan Transit Company. It authorizes the surveys and plans for locating and constructing the railroad and bridges of the company to be revised and modified, making such revised locations and plans to be 'the legal location and plan of construction.' It also authorizes connecting lines of railroad without limiting their location and extent. These are all most important changes and additional privileges, to which no clue whatever is given by the title of the bill."

Senate bill No. 237, entitled "An act to authorize the New York Elevated Railroad Company to extend its railroad in the city of New York, and to regulate the construction, operation and management thereof."

"It is claimed that the articles of association, the acts of the legislature, and the legal proceedings, under which the New York Elevated Railroad Company is acting, confer on it the right to construct an elevated railway, with double track, through Greenwich street, from its southerly extremity, and near Battery Place, and through the Ninth avenue to the Harlem river. But this right is contested by the West Side Elevated Railway Company, which claims that the franchise is vested in itself. These two titles designate the same railroad enterprise, which is familiarly known as the Greenwich Elevated Railroad Company, and they are both variations of the original name, viz: 'The

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[p] Const. 1846, art. 3, § 16.

West Side and Yonkers Patent Railway Company.' The latter was organized by articles of association filed in the office of the Secretary of State, on the 25th July, 1866, under the general railroad act of the 2d of April, 1850, and was recognized as an organized and existing corporation, by an act of the Legislature passed the 22d April, 1867, conferring on it certain privileges and powers, and by another act passed the 3d of June, 1868. The last-named act authorized it to file supplementary articles of association, for the purpose of amending its corporate name. On the 10th of July, the name was changed, under the authority of the last named act, and the corporation became known as 'The West Side Elevated Railway Company.' The railroad proposed to be constructed, under the articles of association of 25th July, 1866, was to extend from the southern extremity of the city of New York to the village of Yonkers. In April, 1871, the road, property and franchises of the company were sold by the sheriff of the city of New York, and were purchased for certain parties, who, with their associates, constitute 'The New York Elevated Railroad Company,' and who filed, in the office of the Secretary of State, articles of association, under that name, on the 5th of December, 1871. These transactions have been a subject of continual dissension between some of the original projectors of the enterprise and its present managers before the public and in the legislature, and a suit has recently been brought by the former to assert its alleged rights against the latter. The corporation organized under the articles of association of 1871, as the New York Elevated Railroad Company, has not received, heretofore, any recognition by the legislature; but the bill under consideration confirms it in the possession of the powers acquired under the general railroad act, and also of the powers and franchises which may have been acquired by said company, by purchase under mortgage sale, by authorizing it to complete the construction of its elevated railroad within three years after the expiration of the time heretofore limited for that purpose. A question may be fairly raised, whether the authority is thereby given to extend the elevated railroad, it is now operating, to the village of Yonkers, according to the articles of association filed the 25th of July, 1866, and by virtue of the mortgage sale of April, 1871, or to Putnam county, under the articles of association filed the 5th of December, 1871. Chapter 489 of the Laws of 1867,[q] which is made applicable to this company by the 6th section of the bill, authorizes the construction of an elevated railway in the counties of New York and Westchester, and designated the route as far as the Harlem river. It is by no means clear what rights, in other respects, were acquired by the mortgage sale of April, 1871; and while these rights are in dispute and in course of judicial investigation, I deem it unjust, on the part of the Legislature, to pass any act which may affect the interests of the litigants, or give an advantage to either of the contesting parties.

There are other very serious objections to the bill. It authorizes the extension of the road with two tracks from the southern termination of its present track to the East River, at or near Whitehall street — and to the Central Park from the main line through the Ninth avenue. It may thus cross and disfigure the Battery, and render one of the streets between Eighth and Ninth avenues entirely unfit for private residences in a portion of the city where such residences are most desirable. The peculiar construction of this road, covering as it does a part of the sidewalk and destroying the privacy of the second stories of the buildings, along which it passes, cannot be otherwise than injurious to private property, and the approval of the bill is strongly opposed by property owners on this ground.

So far as concerns rapid transit, one of the arguments in favor of the bill, nothing is gained by its provisions. If the company possesses any powers under the acts of 1867 and

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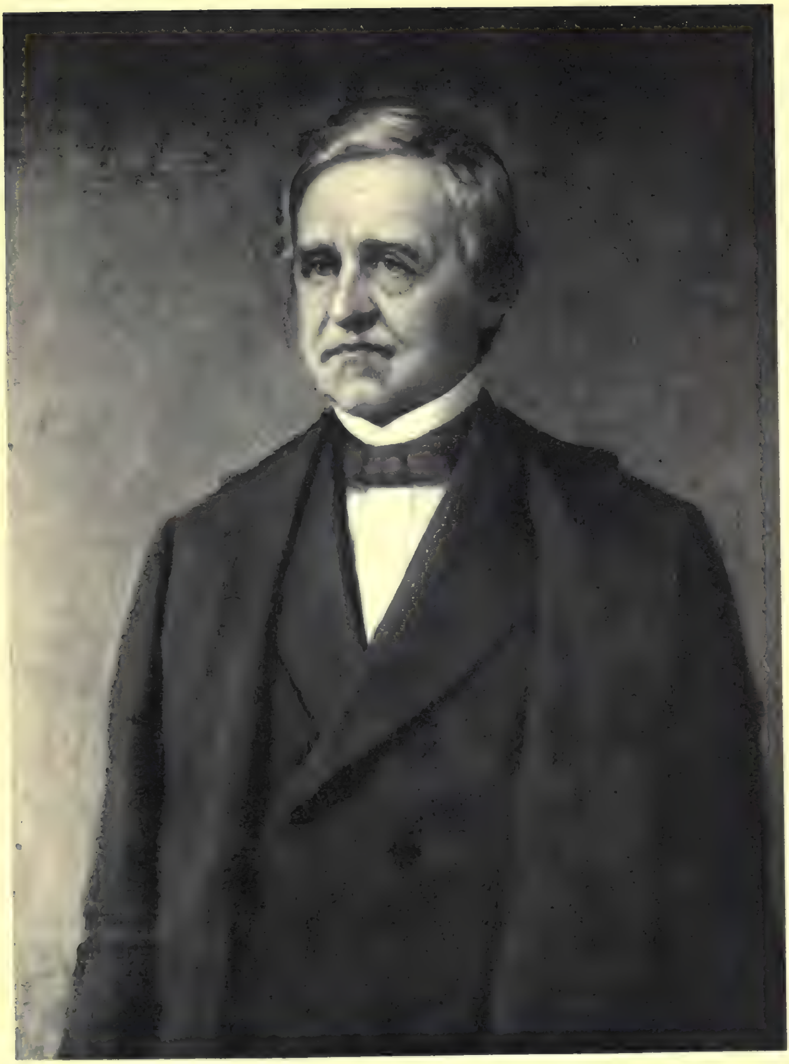
[q] This act was sustained in Story v. New York El. R. Co. (1882), 11 Abb. N. C. 236.

1868, or under the sheriff's sale in 1871, it has the right to construct an elevated railroad with a double track from the southern termination of Greenwich street near Battery place, along both sides of that street and along both sides of the Ninth avenue to the Harlem river. I am not aware that this right is called in question in any quarter, and all that is needed to the completion of the work is that capitalists should have sufficient confidence in its productiveness as an object of investment."

Senate bill No. 73, entitled "An act for the relief of the late board of education of school district number one of the late town of West Farms."

"The object of this bill is to make the city of New York liable for all judgments, decrees and valid claims which existed against the late board of education of school district number one of the town of West Farms, on the first day of January, 1874, when said town was annexed to the city. Among them are certain claims founded upon loans secured by mortgage on the school house in said district. It appears, by the report of the medical director to the department of police, who was required to examine the building with a view to ascertain whether it was suited for a station-house, that 'its situation in the midst of a swamp would very soon render its occupants unfit for any kind of service by reason of sickness from the malarial influences surrounding them.' The same cause certainly renders it equally unfit for a school-house; its construction was strongly opposed for this reason; and it is represented that the price paid for the ground was enormous, and that the real owner was the president of the board of education. Moreover, it is alleged that some of the claims on the board of education on account of the school-house are 'fraudulent in inception, wanting in equitable merit, or in excess of the just rights of the claimants.' Under these circumstances I cannot approve the bill, and give to the claimants any rights which they do not possess under existing laws."



Samuel J. Tilden

SAMUEL J. TILDEN, Governor.

ANNUAL MESSAGE.

EXECUTIVE CHAMBER,
ALBANY, *January* 5, 1875.

TO THE LEGISLATURE.— At the advent of a new year, when the public bodies assemble, to consult in respect to the affairs, and to transact the business of the State, our first thought should be, to offer up devout thanksgiving to the Supreme Disposer of events, for the blessings which we have enjoyed during the year now closed. Our great Commonwealth comprises a population of more than four and a half millions — largely exceeding that of the whole United States at the formation of the federal government — and embracing vastly more extensive and diversified interests and activities. Our sense of duty ought to be commensurate with the magnitude of the trust conferred upon us by the people. Forming, as our State does, so important a part of the American Union, the benefits of an improved polity, of wise legislation, and of good administration, are not confined to our own citizens, but are felt directly and by their example, in our sister States, and in our national reputation throughout the world. Mindful, with you, of these considerations, I proceed to perform the duty enjoined by the constitution upon the governor, to " communicate, by message to the Legislature," " the condition of the State," and to " recommend such matters to them as he shall deem expedient."[a]

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[a] Const. 1846, art. 4, § 4.

RECEIPTS AND EXPENDITURES.

The receipts into and payments from the Treasury, on account of all the funds, except the Canal and Common School funds, for the fiscal year ending September 30th, 1874, were as follows:

Receipts	$26,465,370.43
Payments	19,636,308.36
Balance in the Treasury Sept. 30th, 1874	$6,829,062.07
The available balance amounted to	6,494,881.44

the difference being made up by the defalcation in the State Treasury in 1873, of $304,957.91, and the sum of $29,222.72, being an old balance due from the Bank of Sing Sing.

STATE DEBT.

On the 30th September, 1873, the total funded debt was $36,530,406.40, classified as follows:

General Fund	$3,988,526.40
Contingent (stock issued to the Long Island Railroad Company)	68,000.00
Canal	11,352,880.00
Bounty	21,121,000.00
	$36,530,406.40

During the months of August and September, 1873, stocks of the Bounty Loan were purchased to the amount of $306,000, but not canceled until after September 30th, 1873. Deducting this sum, the bounty debt amounted to $20,815,000, and the total debt to $36,224,406.40.

On the 30th September, 1874, the total funded debt was $30,199,456.40, classified as follows:

General Fund	$3,988,526.40
Contingent	68,000.00
Canal	10,230,430.00
Bounty	15,912,500.00
	$30,199,456.40

The actual reduction of the State debt during the fiscal year ending September 30th, 1874, by cancellation of matured stocks, and by the purchase of $4,902,500 of Bounty Loan 7's of 1877, for the Bounty Debt Sinking Fund, is $6,024,950.

In addition to the $4,902,500 of Bounty Stock, purchased for the Bounty Debt Sinking Fund, during the last fiscal year, and canceled, there have been investments for that sinking fund, since the date of the last report to the present time, in State securities and Government Registered Bonds to the amount of $4,381,500, at a cost of $4,972,091.35; add $327,283.88 premium and $3,210 commissions on Bounty Loan Stock purchased and canceled, and $1,421,584, interest on Bounty debt, makes a total of $11,626,667.23 paid on account of this Sinking Fund since the date of last report to the present time. The securities, now held in trust for this sinking fund, amount, at their par value, to $6,802,944.09 which could be disposed of, at the present market rates, at an average premium of over twelve per cent.

The following statement shows the amount of the State debt on the 30th September, 1874, after deducting the unapplied balances of the sinking funds at that date:

	Debt on September 30, 1874.	Balance of sinking funds on September 30, 1874.	Balance of debt after applying sinking fund.
General fund	$3,988,526 40	$4,142,693 84	....
Contingent	68,000 00	32,823 49	$35,176 51
Canal	10,230,430 00	1,561,018 99	8,669,411 01
Bounty	15,912,500 00	*7,125,278 20	8,787,221 80
	$30,199,456 40	$12,861,814 52	$17,491,809 32

* Deducting interest accrued to October 1, 1874, payable January 1, 1875.

The State debt on the 30th September, 1873, after deducting the unapplied balances of the sinking funds, amounted to	$21,191,379.34
On the 30th September, 1874, to	17,491,809.32
Showing a reduction of	$3,699,570.02

TAXES.

The State tax levy for the current year amounted to 7¼ mills. The total amount of the tax will be $15,727,482.08, about $900,000 in excess of the amount levied during the preceding fiscal year.

OTHER DEPARTMENTS OF THE STATE.

Summary statements in respect to the Banks, Savings Banks, Trust, Loan and Indemnity Companies, Insurance Companies, Quarantine, the Emigration Commission, Common Schools, Colleges and Academies, the State Library and Museum, the National Guard, the soldiers of the war of 1812, the war claims against the United States, the Salt Springs and the State Prisons, are appended. The full reports of the public officers and boards, charged with the special care of these subjects, will be transmitted as soon as their preparation is completed. Your attention is invited to them, and especially to the report of the Comptroller, which will be submitted at the opening of the session.

STATE CENSUS.

The Constitution provides that an enumeration of the inhabitants of the State shall be taken, under the direction of the Legislature, in the year 1855, and at the end of every ten years thereafter.[b]

Chapters 64 and 181 of the Laws of 1855, and Chapter 34 of the Laws of 1865, which remain in full force, prescribe the manner of taking the enumeration.

These acts require the Secretary of State to prepare uniform blank returns and abstracts, for the purpose of taking the enumeration and obtaining statistical information as to population and social statistics, the resources and interests of the State, individual and associated industry, agriculture, the mechanic arts, commerce and manufactures, education, and other information of great value to the statistician and all classes of citizens, and will probably require little or no modification.

It will be necessary for the Legislature to make an appropriation to enable the Secretary of State to carry into effect the provisions of the Constitution and statutes above referred to. A sum equal to the amount appropriated in 1865 for that purpose, by chapter 598 of the laws of that year, will probably be sufficient.

The Secretary of State has taken preliminary steps toward taking the enumeration, and looks to the Legislature for an early appropriation to enable him to go forward with the work.[1]

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[b] Const. 1846, art. 3, § 4.

[1] Chapter 40, passed March 4, appropriated $40,000 for the expense of taking the census, and required the enumeration to begin on the first day of June instead of on the first Monday as prescribed by the census act of 1855. The Constitution of 1894, article 3, section 4, requires the enumeration to be taken during the months of May and June.

PAUPERISM.

The annual report of the State Board of Charities will be laid before the Legislature, and I commend it to your attention. It will contain the results of a special examination in respect to the condition of children in the poorhouses, and the subjects of out door relief and alien paupers. The laws relating to pauperism need revision and amendment. The growth of the State in wealth and population has brought with it more complex relations between capital and labor, which should be carefully studied, in order that legislation may be adapted to their requirements. I suggest whether it is not advisable that a commission be appointed to investigate and report upon the management and relief of the poor, and to propose such legislation as will tend to relieve the industry of the State from the evils which result from poor laws, vicious or inadequate in conception, or defective in execution.[2]

CENTENNIAL EXHIBITION.

The celebration of the centennial anniversary of American Independence will occur in the year 1876. Under the auspices of the general government an international exhibition of arts, manufactures and natural products will be held in the city of Philadelphia. Provision has already been made for the appointment of a board of five commissioners to represent this State, who are to serve without compensation. I recommend a moderate appropriation of money, which will be required to defray the necessary expenses of the commission, and enable this State to take such part in the exhibition as will testify our sense of the greatness of the event commemorated, and is suitable to the dignity of our commonwealth.[3]

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[2] Chapter 173, passed April 24, 1875, prohibited the commitment to a county poor house of any child over three and under sixteen years of age, as vagrant, truant or disorderly, nor could such a child be sent as a pauper to any poor house, unless such child be an unteachable idiot, an epileptic or paralytic, or be otherwise defective, diseased or deformed so as to render it unfit for family care. Such children not so exempted were to be sent to a charitable institution. The prohibition was to take effect on the first of January, 1876, and on or before that day such children already committed to poor houses were to be removed therefrom, and either placed in families or committed to a charitable institution, and so far as practicable to an institution under the control of persons of the same religious faith as the parents of the child.

CONSTITUTIONAL AMENDMENTS.

The adoption of the recent amendments to the Constitution renders necessary some important legislation in order to carry them into full effect. The changes made in Article 2 require corresponding changes in the election laws, with respect to challenges and the oaths thereupon, and the enactment at the present session of a law "excluding from the right of suffrage all persons convicted of bribery or of any infamous crime."[4]

The amendment of section 4 of article 8 of the Constitution requires the enactment of a "general law conforming all charters of savings banks, or institutions for savings, to a uniformity of powers, rights and liabilities."[5]

The addition of Article 15 necessitates the passage of an act prescribing the punishment for the offence of bribery created in Sections 1 and 2. Some legislation may be necessary in consequence of the change in the mode of compensating members of the Legislature, and in some other matters which will readily occur to you.

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[3] By chapter 525, approved June 7, the commission composed of five members which was authorized by concurrent resolution adopted in 1874 (see 1874, note 14, *ante*, p. 656) was superseded by a "State Centennial Board," to be composed of seven members appointed by the Governor, who were to be associated with the National Centennial Commission, and were especially required to "adopt measures to promote, perfect and forward a complete representation of the arts, manufactures and other productions of this State, to be displayed in said International Exhibition." The act appropriated $25,000 for the expenses of the Board.

[4] Chapter 138, passed April 22, prescribed the form of oath to be administered to persons challenged at elections, and made it a misdemeanor for a person convicted of bribery or other infamous crime to vote without having been pardoned and restored to citizenship.

[5] Chapter 371, passed May 17, was intended "to conform the charters of all savings banks or institutions for savings to a uniformity of powers, rights and liabilities, and to provide for the organization of savings banks, for their supervision and for the administration of their affairs."

The section added to Article 3, as Section 18 requires the passage of general laws, providing for the cases in which special legislation is prohibited by that section. Many of these cases are within existing general laws, and, with respect to several others, no immediate legislation seems to be required. Doubtless, however, some legislation is expedient, either in the way of enacting statutes providing for the cases to which the existing statutes do not apply, or in the way of amendments to existing statutes.

The provision prohibiting special legislation in the cases specified, is the amendment, from which the largest benefits have been anticipated. In framing the general laws which are to provide for these cases, great caution will be necessary. The part I took in the Convention of 1846, and even before the enactment of the general banking law of 1838, in advocating the principle of general laws in its application to the creation of corporate bodies which have been practical monopolies, and to other cases where it seemed to be safely applicable, may justify me in suggesting some qualification of the advantages to be derived from the change, unless it be accompanied by especial foresight and wisdom.

It will doubtless be an unavoidable necessity to modify existing general laws, and to shape new ones to be enacted with reference to special and peculiar cases. It is quite possible to give a general form to the phraseology of every enactment intended to apply to a special case, and to operate as a special grant of powers.

The benefit intended to be secured by the prohibition may thus be defeated. Even greater mischiefs than those which existed under the old system may be created.

The parties interested in promoting a law intended to obtain special powers for a particular case, cannot be relied on to guard against the possible operation of the general provision in the other cases to which it may be applied. The legislators, who could measure the whole consequences of an act limited in its terms to a special instance, cannot foresee the possible cases to which a general law adapted to the instance present to his mind, may be found capable of applying, or what operation it may have. There will, therefore, be great danger of vague, loose and hasty legislation in contemplation of one object, but capable of working in numerous cases results neither foreseen or intended.

The new legislation called for by this provision should be framed with more than ordinary care.

FRAUDS AND MALVERSATION BY PUBLIC OFFICERS.

It will be the first and most imperative of our duties to revise the laws which are intended to provide criminal punishment and civil remedies for frauds by public officers, and by persons acting in complicity with them. The condition of our existing statutes and of our unwritten law, as its provisions for such cases have been construed and declared by recent decisions of the court of final resort, disclose grave defects.* The practical evils resulting from these defects are greatly increased by the recent frequency and magnitude of violations of official trust.[6]

IMPERFECTION OF CRIMINAL LAWS.

The statutes punishing embezzlement are held not to apply to such offences, when committed by public officers. The statutes relating to larcenies are deemed to be of questionable application to a fraudulent acquisition of public funds, existing in the form of credits inscribed on the books of a bank, and known in the language of commerce as deposits. The statutes in regard to obtaining money or property by false pretences, are not free from technical embarrassments in their application to public frauds. Without assenting to the conclusion that these statutes are wholly unavailable in such cases, it cannot be doubted that they are inadequate, unfit for the exigencies of the times, and that they abound in needless technical questions which tend to the defeat of public justice.

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* See People v. Ingersoll (1874), 58 N. Y. 1; People v. Fields (1874), 58 N. Y. 491. See *post*, p. 732.

[6] Chapter 49, passed March 12, was a comprehensive statute authorizing actions by the people to recover funds misappropriated by public officers. The act was sustained in People v. Tweed (1875), 63 N. Y. 202.

No illustration of these defects can be so impressive, as certain facts of recent experience. A public officer designated by statute of the State, and authorized, with two others, to audit the then existing liabilities against the County of New York, fraudulently made an audit, or certified to an audit not made, of fictitious claims to the amount of six millions of dollars, and instantly received a million and a half of the money paid on such audits, through a common agent between himself and the pretended owners of the claims. For this flagrant crime, accompanied by many circumstances of aggravation, the eminent counsel, who represented the people, deemed it prudent to seek convictions only for misdemeanors in neglect of official duty, the punishment for each of which is imprisonment in the penitentiary for a term not exceeding one year, and a fine not exceeding two hundred and fifty dollars. When we consider that a person, who, under the temptation of pressing want, steals property of the value of over twenty-five dollars, is liable to imprisonment in the State prison for a term of five years, and that the other offenses against private property are punishable with corresponding severity, the inadequacy of the law applicable to great public delinquents, betraying the highest trusts, and plundering the people on a grand scale, is revolting to all just notions of morality and justice.

RECOMMENDATIONS.

I recommend the enactment of a statute which shall clearly embrace such offenses, and impose penalties upon them proportionate to their moral turpitude and to the mischief which they inflict upon society. It can apply only to future cases; but it may be expected to do something toward preventing a recurrence of such evils.[7]

CIVIL REMEDIES.

The existing civil remedies applicable to such cases are no less inadequate. For the last three years, the spectacle has been exhibited on the conspicuous theatre of our great metropolis, of fraudulent officials remaining in quiet possession and making unobstructed dispositions of great wealth, which we are morally certain was derived from their spoliation of public trusts, notwithstanding legal proof of the most conclusive nature exists of their guilt. In the meantime, civil actions have been dragging their slow length along, as in ordinary cases of disputed rights, while the "laws delay" has been maintained by the use of the vast fund abstracted from the public, and no process has been found in our laws by which it could be attached and preserved pending the litigation, or its disposition interfered with before final judgment.

RECOMMENDATION.

A bill to extend to such cases the remedy of attachment as in case of foreign corporations, or non-resident, absconding, or concealed defendants, has been heretofore submitted to the Legislature. I trust that such a measure will be speedily adopted. I recommend, further, that preference be given to such cases in the Courts, whoever may be the party plaintiff.[8]

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[7] Frauds and embezzlements described in the message were made punishable by chapter 19, passed February 17, which on conviction prescribed imprisonment for not less than three nor more than ten years, or by a fine not exceeding five times the loss resulting from the fraudulent act, or by both such fine and imprisonment.

A GREAT DEFECT IN OUR JURISPRUDENCE.

A still more serious defect exists in our jurisprudence. Where a wrong is committed, which affects the treasury of a city, county, town or village, the officers who would be the proper plaintiffs in any suit for redress, or who possess exclusively the power to institute or conduct such suits, may be themselves the wrong-doers, or be in complicity with the wrong-doers. In every such case, the remedy must, of course, be very much embarrassed, if not wholly unavailing. The unfaithful incumbents may be entitled to serve for a long term, or they may possess great facilities for gaining the favor of their successors. While the remedy is thus delayed — perhaps for years — the proofs may be lost; or the depredators may make away with their property, and withdraw their persons from the reach of process; or they may, through the lapse of time, become discharged from liability by the statute of limitations. As the offence becomes stale, the public sentiment, which inspires voluntary efforts of patriotic citizens in behalf of the people to seek redress, is wearied and weakened. On the other hand, temptations are strengthened and developed into actual crimes by the prospect of impunity, which grows out of tardiness and uncertainty in the remedial law.

ATTEMPTS TO REMEDY THAT DEFECT.

The frequent occurrence of malversation in local governing officials, has stimulated ingenuity to devise some judicial remedy. At first it was conceived that the injured taxpayers or inhabitants might, in their own names, invoke judicial aid. An analogy was set up to the case of a private corporation in which a corporator, on the omission of the directors to sue, might bring an action, in behalf of himself and his associates, making the corporate body a defendant. The idea received much favor from the courts in the judicial district which comprises the city of New York.

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[8] Chapter 28, passed February 24, authorized proceedings by attachments against public officers charged with the misappropriation of funds belonging to the State or to any municipality.

But the Court of Appeals in Roosevelt v. Draper,[c] and in Doolittle v. Supervisors of Broome County,[d] decided that the individual taxpayer had no special interest distinct from that of the public, which would enable him to sustain an action, in person, for the redress of a public wrong of the nature involved in those cases. In the former case, the intimation was made that the true "remedial process against an abuse of administrative power tending to taxation, is furnished by our elective system, or by a proceeding in behalf of the State" in the latter, that "for wrongs against the public, the remedy, whether civil or criminal, is by a prosecution instituted by the State in its political character, or by some officer authorized by law to act in its behalf."

The whole reasoning of the court proceeded upon this ground, nor does it seem to have been questioned by the counsel on either side. The remedy intimated in these decisions has been recognized as established law in Great Britain, from which we inherit our equity jurisprudence by a series of great precedents. It has been applied to populous municipalities, like Liverpool, and to corporate funds derived from taxation, and applicable to general municipal purposes. It is a natural deduction from the historic origin and the expansive philosophy of the equity system, whose proud boast has ever been that it leaves no wrong without a remedy.

On the discovery in 1871 of the frauds committed by the governing officials of the municipality of New York, the Attorney General, acting on these intimations of our own courts and on the English precedents, instituted actions against the parties inculpated by positive proofs. Within the last year, the Court of Appeals, in the cases of The People v. Tweed, Ingersoll et al.,[e] and of The People v. Fields,[f] has decided that the State cannot maintain those actions. The result is at last arrived at, that neither the taxpayer, nor the State in his behalf, can seek redress; that in all the long interval, nobody has been competent to sue or conduct a suit, except some corporation counsel who was an appointee of the accused parties. This is a state of our jurisprudence which calls for new legislation.

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[c] 23 N. Y. 318.

[d] 18 N. Y. 155.

NEW LEGISLATION.

In choosing between the two expedients of vesting the right to sue in the individual taxpayer or in the State, it is obvious that the latter should be preferred. The existing statutes intended to confer some limited rights on the individual taxpayer, are practically nugatory. The reasoning of the Court of Appeals, in the cases denying him the right under our customary jurisprudence or the common law, argues with cogency the inconveniences which might attend the possession of such a power by every member of so multitudinous a body. The wiser alternative is to vest the power in the people of the State, acting by their Attorney General. It will be analogous to the authority which exists in respect to private corporations and in cases of nuisances, and of *quo warranto;* and will be in conformity to the safe methods and traditional usages of equity jurisprudence.[9]

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[e] 58 N. Y. 1.

[f] 58 N. Y. 491.

[9] The Governor's suggestion as to proceedings against public officers was embodied in chapter 49, passed March 12, which authorized actions by the Attorney General to recover public funds misappropriated by an officer of the State or of any municipal corporation, and gave such actions a preference in all courts. See note 6. This subject was afterwards included in the Code of Civil Procedure, § 1969.

LOCAL SELF-GOVERNMENT.

The establishment of such a remedy for the injured taxpayer or citizen will not detract from, but will make possible, and will found on a durable basis local self-government. Human society will struggle like everything that lives, to preserve its own existence. When abuses become intolerable, to escape them it will often surrender its dearest rights.

All the invasions of the rights of the people of the City of New York to choose their own rulers and to manage their own affairs — which have been a practical denial of self-government for the last twenty years — have been ventured upon in the name of reform, under a public opinion created by abuses and wrongs of local administration, that found no redress. When the injured taxpayer could discover no mode of removing a delinquent official, and no way of holding him to account in the courts, he assented to an appeal to the legislative power at Albany; and an act was passed whereby one functionary was expelled, and by some device the substitute selected was put in office. Differing in politics as the City and State did, and with all the temptations to individual selfishness and ambition to grasp patronage and power, the great municipal trusts soon came to be the traffic of the lobbies. It is long since the people of the City of New York have elected any Mayor who has had the appointment, after his election, of the important municipal officers. Under the charter of 1870, and again under the charter of 1873, the power of appointment was conferred on a Mayor already in office. There has not been an election in many years, in which the elective power of the people was effective to produce any practical results, in respect to the heads of departments in which the actual governing power really resides.

A new disposition of the great municipal trusts has been generally worked out by new legislation. The arrangements were made in secret. Public opinion had no opportunity to act in discussion, and no power to influence results. Inferior offices, contracts, and sometimes money were means of competition, from which those who could not use these weapons were excluded.

Whatever defects may sometimes have been visible in a system of local self-government, under elections by the people, they are infinitely less than the evils of such a system, which insures bad government of the city, and tends to corrupt the legislative bodies of the State.

A popular election invokes publicity — discussion by the contending parties — opportunity for new party combinations, and all the methods in which public opinion works out results.

OFFICIAL ACCOUNTABILITY A CONDITION OF MUNICIPAL INDEPENDENCE.

No part of the civic history of this State is more instructive than the recorded debates of the Convention of 1821, on the question of electing, by the voters of the counties, the sheriff, who is the executive arm of the State. It was thoughtfully considered by our foremost statesmen. Its solution embraced the two ideas — the selection by the locality, and the removal for cause by the State.[g] The Convention of 1846 carried its dispersion of the power of choosing local officers, much farther, on the same system.[h] That system is to distinguish between the power of electing or appointing the officer and the power to hold him to account. It is, while dispersing the one to the localities, to reserve the other to the State, acting by its general representatives and as a unit; to retain in the collective State a supervisory power of removal, in addition to whatever other accountability may result to the voters or authorities of the locality, from the power to change the officer at the expiration of his term, or from special provisions of law.

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[g] Const. 1821, art. 4, § 8.

[h] Const. 1846, art. 10, §§ 1, 2.

The two ideas are not incompatible. On the contrary, each is the complement of the other. Such dispersion of the appointing power has become possible, only because these devices have been invented to preserve accountability to the State.

The right of the State, by its general representatives to remove, is capable of being made to destroy the local election or appointment. The right of the State to sue is not. It is less in conflict with the local power of election and appointment. Official accountability is not complete if there is no remedy for official wrongs but removal. That remedy needs to be supplemented by accountability in the courts on the appeal of a taxpayer or citizen of the locality. If a right to that appeal is denied, the appeal will continue to be made, on often recurring occasions, to the legislative power; and the system of the last twenty years will be perpetuated.

MUNICIPAL PROBLEM.

The problem of municipal government is agitating the intellect of all civilized peoples. In our own State it is the more interesting and important because it involves the half of all our population, which lives in cities or large villages.

The frame work of the system which we should adopt must be intrenched in the fundamental law; and protected, by constitutional restrictions, from arbitrary and capricious changes by legislation. This problem failed of any solution in the recent amendments to the Constitution. It is worthy of long continued thought and debate. Time and discussion will at last mature a safe and wise result.[10]

THE ERIE CANAL AND THE TRANSPORTATION PROBLEM.

The State of New York, not denying the general unfitness of Government to own, construct or manage the works which afford the means of transportation, saw an exception in the situation, and in the nature of the canals, which are trunk communications between the Hudson and the great inland seas of the North and West. They connect vast navigable public waters, and themselves assume something of a public character.

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[10] See special message of May 11, and note 19, for a further consideration of the subject of municipal reform.

THE NATURAL PASS OF COMMERCE.

The voyage from Europe to America, even if destined to Southern ports, is deflected by the ocean currents so as to pass closely by the gates of our commercial metropolis. That capacious harbor is open the whole year, accessible in all prevailing winds, is sheltered, safe and tranquil. From it the smooth waters of the Hudson give transit to the lightest hull, carrying the largest cargo, which the skill of man has brought into use. The head of navigation on the Hudson touches the natural pass of commerce, opened up in the geographical configuration of this continent, where the Alleghanies are cloven down to their base, and travel and traffic are allowed to flow across on a level and by the narrowest isthmus, to the lake ports, which connect with all that great system of inland water communication and interior commerce, the most remarkable, in its character and extent, and accessories, that exists in any part of the globe.

THE NORTHWEST.

Tributary to the western centres of lake commerce, such as Chicago and Milwaukee, are vast areas of fertile soils, which stretch to and partly include the valley of the Upper Mississippi. Open prairies, easily brought into cultivation, fitted for the use of agricultural machinery, adapted to the cheap construction of railways, and peculiarly dependent on their use as a means of intercourse and traffic, have been opened to settlers at nominal prices. They have been rapidly filled by a young, intelligent and energetic population, trained in the arts and industries of an older civilization, and applying them to natural advantages which have been found elsewhere, only in conjunction with the social barbarism of an uninhabited wilderness. They are now covered with a net work of railways, which connect myriads of little centres with the lake ports and with the trunk railways, that bring them into practical contiguity to our great Eastern centres of population, capital, commerce and manufactures.

NEW YORK'S LIBERAL POLICY — THE ERIE CANAL TRUST.

New York, without arrogating to itself an undue share in these achievements, may contemplate with proud satisfaction its contribution to results so magnificent. Important as are the advantages which have accrued to itself, it has not sought to monopolize the benefits of its policy. The price of such cereals and other products of agriculture as are exported in considerable quantities, are mainly fixed by the competitions of the foreign markets, even for our own consumption. The cheapening of the cost of transit, therefore, chiefly profits the producer. This consideration illustrates how large and liberal, in the main, is the policy adopted by the State — a policy which I had the satisfaction of advocating in 1846 and in 1867 — of treating these great works as a trust for the million, and not seeking to make revenue or profit for the sovereign out of the right of way. In consonance with the same policy, was the action of the State in 1851, in permitting the transit free of tolls, upon a railway which it allowed to be constructed between the termini of the Erie Canal and along its bank. It had originally undertaken the construction and administration of the canal, in order to create a facile and cheap transportation demanded by the interests of the people, and not otherwise possible to be attained. It did not forget the motive for which it had acted, and remember only its selfish interests as a proprietor. It, therefore, by an act which anticipated the necessity afterward to arise by the construction of rival routes, repealed all restraints on the carriage of property, and opened to free competition every mode of transit, even in rivalry to its own works, for the products of the West and for the manufactures and merchandise of the East.

NOT TO BE ABANDONED.

The Erie Canal remains an important and valuable instrument of transport, not only by its direct services, but by its regulating power in competition with other methods of transportation. The State, so far as we can now foresee, ought to preserve it, and not contemplate its abandonment.

DUTIES OF THE STATE.

If the State accepts the view which commands it to abstain as a proprietor from making profit out of the canal, but to deal with it as a trust, it still has great duties to perform. It is bound, as a faithful trustee, to protect this great work, not only from a spoliation of its revenues and from maladministration, but from empirical changes, proposed in the seductive form of specious improvements that would destroy its usefulness while charging it with new incumbrances; and from an improvident tampering with its incomes that would dissipate its means of effecting real improvements.

These are its ever-recurring and its greatest perils.

LAKE AND CANAL NAVIGATION CANNOT BE ASSIMILATED.

The 925 miles of lake navigation from Chicago to Buffalo, and the 495 miles of canal and river navigation from Buffalo to New York, and the 3,000 miles of ocean navigation from New York to the Old World, cannot be made homogeneous or even assimilated; each is subject to physical conditions which are unchangeable, and to which the vehicle of transportation must be adapted.

LAKE BOATS UNFIT AS CANAL BOATS.

The rough and stormy lakes require a strong vessel, made seaworthy by its deep keel, fully manned, and of a form intended for speed in an unlimited expanse of water. The Canal admits of a light keel, and a shape which will carry a larger proportional cargo; for the boat moves safely in a tranquil channel of water, closely confined by physical boundaries on the bottom and sides. and cannot but submit to a slow movement.

The propeller of the lakes tends to grow in dimensions. A recent one carries 70,000 bushels of wheat, or 2,100 tons. A barge to be towed by each propeller is a system now being tried with fair prospects of success.

The lake craft of the average size carries less cargo in proportion to the vessel than the canal boat; and it costs twice and a half or three times as much as the canal boat per ton of capacity.

If the canal were made large enough to pass the lake craft, the transporter could not afford to use the lake craft on the Canal. It carries too little cargo — it is too costly — it would have to reduce its rate of motion from about eight miles per hour on the lake to less than three miles per hour, which is the highest aim of the canal boats that now make only 1 42-100 miles per hour.

Such a vehicle of transport would not be adapted to the water channel it must move in, and would not be economical. Transshipment at Buffalo, with modern machinery, would cost little, compared with the loss incident to using an unfit and illy adapted instrument.

To enlarge the Erie Canal to dimensions adapted to the movement of such a vessel, at the rate of less than three miles per hour, would be so inconvenient to the traffic, that it would be easier and cheaper to construct an independent work. That would probably cost a principal sum, the annual interest on which would be greater than the entire amount now received by the carrier for his services, and by the State for its tolls on all the existing business. A shorter route would be likely to be preferred. The Hudson River, from Troy to deep water, would need a similar reconstruction.

ENLARGED LOCKS AND UNENLARGED WATER-WAY.

A project often urged within the last ten years is the enlargement of the locks and other structures of the Erie Canal, without a proportionate enlargement of the water-way. That plan exhibits a singular union of injurious costliness and fatal parsimony. It is founded on the fallacy that the use of a large boat, without reference to its adaptation to the water-way in which it is to move, would be economical. It is supported by an estimate of the State Engineer in 1864, that the cost of transportation would be reduced one-half. His opinion has been repeated on all occasions until the present time.

But that estimate, when analyzed, is found to omit all the wages and support of the crew during the return trip, and during the time occupied in loading and unloading, and to allow for the use of the boat about half its real cost. In other respects, it was utterly unworthy of trust.

ECONOMY FROM THE BEST GROUP OF ADAPTATIONS.

The truth is, the boat is but one part of the whole machine of transportation; economy in the service depends upon getting the best adaptation of all the various parts — the boat — the motive power — the canal, with its structures and its water-way; the best group of adaptations which adjustments and compromises of each can work out and combine; and the resultant of the greatest economies which can be obtained in conjunction.

A larger boat, in a water-way which now needs to be itself enlarged and improved to give a good transit to the present boat, would be an unmixed damage to the economy of the service, attained at immense cost.

PERFECTING THE CANAL THE WISE POLICY.

The Erie Canal was planned in view of the best science and experience then possessed. It has excellent adaptations. It is a superior instrument of transportation. It should not be fundamentally changed in its character and conditions without great consideration. It should be perfected, and so made available to every practicable extent, for facilitating and cheapening the exchanges of commodities between the East and the West.

ITS CAPACITY — ITS ECONOMY.

The two questions concerning it are: first, its capacity to do an aggregate business during a given period; secondly, the economy per ton per mile of the transportation it affords. These questions are generally confused in all discussions. They are completely distinct. They depend upon wholly different conditions.

ITS CAPACITY AMPLE.

Capacity to accommodate an aggregate tonnage during a day, a month, or a season of navigation, depends on the number of boats of the normal size which the locks are able to pass during the period. Boats can be multiplied indefinitely. The limit to their use is in the number to which the locks can give transit. The time occupied in a lockage is the test. But it is unnecessary to apply that, for the actual results of experience set at rest every doubt.

Of the seventy-two locks which intervene between the waters of Lake Erie and the waters of the Hudson, all but a few have been doubled for many years. In 1867, when the subject was discussed in the Constitutional Convention, thirteen remained single. For the first time, on the opening of navigation next Spring, double locks will be brought into use throughout the entire canal. That will nearly double the capacity of the canal to make lockages. The largest delivery of the Erie Canal at tide-water was in 1862. It amounted to 2,917,094 tons, in cargoes averaging 167 tons. The lockages both ways, and including rafts which pass only one way,—at Alexander's which is in the throat of the canal, 3 miles west of Schenectady,—was 34,977. In 1873, the deliveries were 2,585,355 tons, in cargoes averaging 213 tons, and the lockages were 24,960.

The theoretical capacity of the canal will be three or four times the largest tonnage it has ever reached. There is no doubt it can conveniently and easily do double the business which has ever existed, even though the locks be not manned and worked with the highest efficiency. The subject of capacity may, therefore, be dismissed from this discussion.

ECONOMY PER TON PER MILE.

The question really worthy of our attention is how we can perfect the canal so as to reduce the cost per ton per mile of the transportation it affords.

Quickening the movement of the boat increases the service it renders in a given period. It lessens every element in the cost of that service. It enlarges the number of tons carried in the given time, and by enlarging the divisor of the same expenses, it reduces the rate of cost per ton per mile.

TO BE INCREASED BY PERFECTING WATER-WAY.

The economy in the transit of the boat must be made, not in the locks, but in the water-way. The 72 locks in the 345 miles between Buffalo and West Troy, if each takes five minutes, would occupy exactly six hours.

In October, 1873, 76 boats were timed, and their average passage down, with average cargoes of 227 tons, was 10 days, 2 hours and 46 minutes, or nearly 243 hours. If we double the time taken in the locks, the time occupied on the levels between them would still be over 95 per cent. of the whole time of the voyage. It is clear, therefore, that the saving of time must be made in the 95 per cent. and not in the five per cent. Economy per ton per mile in the transportation, so far as it depends on the structure of the canal, is to be found in the relation which the water-way bears to the boat.

The movement of the boat through water confined in an artificial channel — narrow and shallow — is, at best, very slow. The engineers, in 1835, planned the Erie Canal and the boat with such relations to each other as to give the greatest economy of power and facility of transit. The boat has inclined to grow rather large and too square. The water-way was practically never excavated in every part to its proper dimensions. Time, the action of the elements, and neglect of administration, all tend to fill it by deposits. I may be excused for repeating here what I said in the Constitutional Convention eight years ago:

"What the Erie Canal wants is more water in the prism — more water in the water-way. A great deal of it is not much more than six feet, and boats drag along over a little skim of water; whereas it ought to have a body of water larger and deeper even than was intended in the original project. Bring it up to seven feet — honest seven feet — and on all the levels, wherever you can, bottom it out; throw the excavation upon the banks; increase that seven feet toward eight feet, as you can do so, progressively and economically. You may also take out the bench walls."

RECOMMENDATIONS.

I recommend that such measures be taken as your wisdom, aided by such information as can be had from the proper administrative officers, may devise, to put in good condition and to improve the water-way of Erie Canal; and that provision be made by law to enable the State Engineer, soon after navigation is opened, to measure the depth of water in the Canal by cross sections as often as every four rods of its length, and on the upper and lower mitre sill of each lock.

FUTURE INVENTIONS AND ECONOMIES.

Such a policy, if properly executed, will give a better and more economical transit to the boats, if they continue to be towed by horses. It will also facilitate the use of steam canal boats, and the full realization of the advantages they may be expected to give as to economy of transportation. The obstacle to their use in 1867 was that the machinery, in its then state, displaced too much cargo to be economical, and was, in other respects, imperfect. The progress of invention since seems to promise more beneficial results. If the movement of the boat can be expedited from $1\frac{42}{100}$ miles to 3 miles per hour, including the time consumed in the lockages, the improvement will be of great importance and value. The estimate of the able engineer of the Commission on Steam Canal Navigation, is that the cost of carriage of a bushel of wheat from Buffalo to New York will be reduced from eight cents to four cents. It is not to be supposed that the inventive genius applied to this interesting subject is exhausted, and if these results shall, in any degree, fail to be realized by the present experiments, we may, nevertheless, anticipate more complete success in the future.

INCOME AND OUTGO.

It will be seen that on the Erie Canal alone the surplus of income over expenditures is about 37½ per cent. of the gross income. If the three other canals which are to be retained by the State as part of the system be included, the surplus is but $11\frac{2}{5}$ per cent.

TOLLS.

The present tolls on wheat are $3\frac{1}{10}$ cents, and on corn 3 cents per bushel, from Buffalo to Troy — 345 miles. They were reduced in 1870 — those on wheat from $6\frac{21}{100}$, or one-half; and those on corn from $4\frac{83}{100}$ to 3 cents, or about 38 per cent.

One cent per bushel taken off the present tolls, and the same proportion on other articles, would annihilate nearly all the net income of the Erie Canal, considered alone, and would make a deficiency, in respect to the four canals retained, of half a million of dollars a year if future expenditure should be the same as in these three years.

The construction of the details of the toll sheet belongs to the Canal Board, and adjustments from time to time may be necessary. Doubtless suggestions on that subject will always receive due consideration. But in the present condition of things to embark hastily and unadvisedly upon a general reduction of tolls might well be considered as improvident, even in respect to the canals themselves. To confiscate the surplus of one cent, or one-half a cent per bushel, which alone gives the means of making the improvements expected to realize a reduction of four cents in the cost of transportation, would not seem a wise execution of the trust, even disregarding other considerations which cannot be wholly overlooked.

NO RASH INNOVATIONS.

The question of altering the gates of the locks, or otherwise lengthening the chambers, may be safely deferred until we can be more sure of its utility. The fact that, on the Delaware and Raritan Canal, which admits of long boats, the proportions which exist in those now used on the Erie Canal are preferred, is against that alteration, as is also the judgment of excellent canal engineers. Holding ourselves ready to accept improvements which have been subjected to trial and scrutiny, until they are practically assured of success, we ought to exercise the same caution, in respect to rash or crude innovations, which ordinarily governs men in private business.

FINANCIAL RESULTS OF THE LAST THREE YEARS.

The financial results of the fiscal years ending September 30, 1874, 1873 and 1872, for the Erie Canal, and for the Champlain, the Oswego, and the Cayuga and Seneca, are as follows:

ERIE.

YEAR ENDING SEPTEMBER 30.	Income.	Ordinary Repairs.	Extraordinary Repairs.	Total Expenditure.
1872	$2,760,147 50	$1,025,079 09	$661,942 02	$1,687,021 11
1873	2,710,601 49	749,977 03	967,175 39	1,717,152 42
1874	2,672,787 22	701,340 81	973,548 96	1,674,889 77
	$8,143,536 21			$5,079,063 30
Income in excess of disbursements				$3,064,472 91
Average for each year				1,021,490 97

CHAMPLAIN.

1872	$150,644 28	$236,211 47	$251,871 61	$488,083 08
1873	153,417 86	234,677 37	562,782 95	797,460 32
1874	123,703 54	203,137 90	242,216 43	445,354 33
	$427,765 68			$1,730,897 73
Excess of expenditure over income				$1,303,132 05
Average for each year				434,377 35

OSWEGO.

1872	$90,796 57	$171,794 82	$141,673 94	$313,468 76
1873	88,428 13	93,938 80	78,880 58	172,819 39
1874	70,119 59	107,938 21	75,561 29	183,499 50
	$249,344 29			$669,787 65
Excess of expenditure over income				$420,443 36
Average for each year				140,147 78

CAYUGA AND SENECA.

1872	$17,882 58	$32,267 23	$26,319 00	$64,586 23
1873	22,481 11	27,143 48	6,921 06	34,064 54
1874	19,311 47	28,934 08	28,517 04	57,451 12
	$59,675 16			$156,101 89
Excess of expenditure over income				$96,426 73
Average for each year				32,142 24

RECAPITULATION FOR THREE YEARS. INCOME OVER EXPENDITURE.

Erie		$3,064,472 91
EXCESS OF EXPENDITURE OVER INCOME.		
Champlain	$1,303,132 05	
Oswego	420,443 36	
Cayuga and Seneca	96,426 73	1,820,002 14
		$1,244,470 77
Each year		414,823 59

THE PAYING CANALS.

It will be seen that during the last three years the income of the Erie Canal considered alone, has been $8,143,536.21, and its expenses $5,079,063.30, yielding a surplus of $3,064,472.91, or an average for each year of $1,021,490.97. The excess of expenditure over income of the three other canals which are to be retained by the State has been $1,820,002.14, or three-fifths of the surplus produced by the Erie. Considering the four as a system collectively, the surplus has been $1,244,470.77, or an average for each year of $414,823.59.

THE NON-PAYING CANALS.

During the same three years the five other canals to which the constitutional amendment applies, have given an income of $119,864.45, or for each year of $39,954.81, against an expenditure of $1,596,499.74, or for each year of $532,166.59. They have consumed all the net income of the paying canals and have charged the State with a loss of $232,164.52, or for each year $77,388.17. In addition to this annual loss, the whole burden of the sinking fund to pay the Canal Debt is thrown upon the State.

INCREASE INCOME BEFORE DISCARDING INCOME.

A careful investigation whether the net incomes of the canals retained cannot be increased, ought to precede a surrender of what little now exists. Ordinary repairs should be scrutinized with a view to retrenching their cost, and to obtaining the largest possible results from the outlay. Extraordinary repairs include much which so regularly recurs in different forms, that they must be considered a part of the maintenance of the works. No doubt they also include improvements which are of the nature of new capital. These and all improvements should be governed by a plan and purpose leading to definite results; and, instead of scattering expenditures on imperfect constructions, should aim to complete and make available the specific parts undertaken. Unity of administration and of system, both in respect to repairs and improvements, should be established, even if only by the voluntary consultation and co-operation of officers having authority over separate portions of a single work. It is worthy of consideration, whether any legislation can aid in securing the unity in this respect which existed under our former Constitution.

NEW YORK THE TRUSTEE FOR THE INTERESTS OF ALL.

The State, hearing all parties interested in the use of the Canals, will remember that itself, as an arbiter and trustee, must look equitably to the interests of all. This it will do in a wise, liberal and just spirit. To the last degree possible, it will cheapen facilities to trade. It will aim to preserve for its metropolis its position as the carrier, merchant and banker of the New World.

CHIEF FUNCTION OF THE CANAL SYSTEM — NEW YORK CITY.

Inevitable changes must be recognized as the results of modern inventions and improvements in the machinery of transportation. When water routes alone existed, products came to New York for distribution to points which are now more easily and cheaply reached directly by rail. Railroads covering the country like a net work touch so many points that they are a more perfect and complete agency for the reception and distribution of produce, than a water communication connecting a few principal points; and where the transit from the producer to the consumer requires the use of the rail to reach the water, or after leaving the water, or both, the all rail route will often be preferred. New routes will acquire the business which is naturally tributary to them, and take besides some portion of the general business. The main transportation of Western Agricultural products is for local consumption in the East. What comes to us for our own consumption cannot be diverted. What goes for consumption elsewhere cannot be acquired. The exports of agricultural products to foreign countries are but a small part of the whole production. In those, New York will easily continue to maintain her pre-eminence.

The Champlain and Oswego Canals are, as well as the Erie, in some sense, trunk canals; and the Cayuga and Seneca Canal connects our interior lakes. It is a noteworthy fact that Mr. Flagg, who so long and honorably conducted the State finances when the Canal Department was a bureau in his office, always insisted that with the four canals now to be retained the system was complete. Those it is now proposed to abandon, are not fruits of his policy.

DISPOSITION OF THE NON-PAYING CANALS.

The adoption of the constitutional amendment removing the prohibition against "selling, leasing, or otherwise disposing of" the canals owned by the State in respect to all except the Erie, the Oswego, the Champlain and the Cayuga and Seneca Canals,[1] undoubtedly contemplates such action on your part as will disencumber the revenues of the canals retained by the State, and disembarrass the treasury of the State from the unproductive works in respect to which the prohibition is withdrawn. It cannot have been supposed possible to "sell or lease" those works on conditions which require the purchaser to maintain and operate them. To "otherwise dispose of" them amounts to a practical abandonment.

USE AS FEEDERS.

Even to deal with them thus involves many important questions of a business character. Those portions of them which descend towards the Erie Canal act as feeders to supply water to that canal. The supply cannot be safely diminished, and might be judiciously increased. The improvement of the water-way contemplated will call for more water. The consideration of what must be done to retain as feeders, portions of these canals not hereafter to be maintained by the State for navigation, or what other provision for a supply of water shall be substituted, is important. To make the change contemplated by the amendment, with as little harm as possible to private interests, and to consider and provide for cases of possible damage which may be caused by the works when falling into disuse, needs careful study of the facts of the situation. It is also to be ascertained what portion, if any, of the property of the State connected with these works can be wisely sold.

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[1] Const. 1846, art. 7, § 6, am. 1874.

A SPECIAL COMMISSION RECOMMENDED.

The best suggestion which occurs to me on this subject, is to impose the duty of considering and reporting on these questions upon a special commission consisting of four persons. In the meantime, no expenditures should be made upon those works, which are not strictly necessary in view of their probable future.[11]

THE INTEREST OF NEW YORK IN THE FINANCIAL POLICY OF THE UNITED STATES.

The State of New York receives nearly seven-tenths of all the imports, and sends abroad nearly half of all the exports of the whole United States. In its commercial metropolis, a much larger share of our dealings with foreign nations in securities and money is transacted, and, as at a common mart, the exchanges are largely made between the people of the United States in domestic manufactures and products, and in public and corporate securities and stocks. More than one-half of the revenues of the Federal Government are collected within its borders, and at least one-fifth of all Federal taxation falls upon its citizens.

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[11] Chapter 499, approved June 7, required the Canal Commissioners and State Engineer and Surveyor to examine the lateral canals, including the Chemung, Genesee Valley, Chenango, Black River and Crooked Lake canals and ascertain and report to the Canal Board whether any of them should be sold, leased or abandoned, and whether any of them should be retained as feeder to other canals. The same act required the Canal Board to present the findings to the Legislature of 1876, "with their opinion as to the best disposition to be made of the said canals, and the manner in which said disposition should be made, and what legislation will be necessary to carry into effect their recommendations." See 1876, note 4, *post*, p. 933.

Since the Federal Government has assumed to provide a currency for the whole country, directly by the issue of its own notes, or indirectly by bank notes, which are secured upon bonds of the United States, and, in case of default by the issuer, are to be paid, before resorting to the securities, by the United States; since it has incidentally absorbed the regulation of the business of banking; since it has largely increased its taxation, and imposes that taxation in forms which affect the courses of industry and the application of capital and labor, it is impossible to exclude these vast operations, and the administrative policy and the legislation connected with them, from a review of "the condition of the State" which it is the constitutional duty of the Governor to communicate with such recommendations "as he shall judge expedient," "to the Legislature at every session."[1]

CAN MORE CURRENCY REVIVE PROSPERITY?

The illusion is too common that an additional issue of currency in legal tenders or bank notes, would alleviate the distress now felt in business, cause a general rise of prices, and revive a seeming, if not a real, prosperity. Thus many are tempted to desire or to acquiesce in a demand upon the Federal Government to put out new promises to pay, while it is yet in a long-continued default as to those heretofore made; and to do so after ten years of peace, while having no better excuse for its present default, than lack of skill in applying its abundant resources to the restoration of the public faith.

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[1] Const. 1846, art. 4, § 4.

The hope of benefits to any class from such an unsound policy, would prove to be completely fallacious. It would prolong and intensify the evils sought to be alleviated. This conclusion is clear upon principle, and in our own experience. In order distinctly to see its truth, it is only necessary to analyze that function in the business of society which is performed by the circulatory credits known as currency.

CURRENCY BUT A PART OF CIRCULATING CREDITS.

To economize the use of metallic money, which had become the common instrument of exchange, personal credit, in the form of book accounts, was introduced. For example, the farmer delivered to the country merchant his grain when ready for the market, and the merchant delivered his goods at the times when they were wanted by the farmer for consumption; each delivery was entered in a running account, until a balance was struck, and even then the settlement generally took place without the intervention of money, which neither party had the capital to own for each transaction, or to pay the ultimate balance. Next came the note of hand, and, when the transaction was between parties doing business at different places, drafts and bills of exchange. At last the most refined tool of commerce became perfected. The bank note, promising to pay coin on demand, to bearer, in an even and convenient amount, engraved and authenticated — when issued by an institution or individual of established general credit — was voluntarily accepted by everybody in place of coin. It is the currency used in payment by those who do not keep bank accounts, and, in petty transactions, by those who do keep bank accounts. A credit inscribed on the books of the bank, known in the language of commerce as a deposit, and transferred by check is the preferred medium of payment, in all save petty transactions, by those who keep bank accounts. It is preferred because a check may represent a large and uneven amount, which in notes would be inconvenient in the counting, handling and custody; and a check payable to order is safer, and is itself an evidence of the payment. In dense communities, where the bank is near the customers, checks are mostly used. In sparse communities, where the bank is remote from the dealers and holders, bank notes are mostly used.

These two tools of trade and mediums of payment are, in their general functions, perfectly identical.

BANK NOTES AND CHECKS THE SAME IN EFFECT AND NATURE.

Their real nature is, that they are a provision for expected payments, and a reserve for possible payments. On deposits, the holder submits to a partial or total loss of interest, for some banks allow interest, at low rates, on deposits; on bank notes, the holder submits to a total loss of interest. To each holder the motive is ever present, to reduce his non-interest bearing reserve to the lowest necessary amount, by investing it, if it be his own, or by returning it, if it be borrowed.

THEIR AMOUNT VARIED BY PEOPLE'S WANTS, IF PAYABLE IN COIN.

If the currency be redeemable, the wants of the community, and not the wishes of the banks, will determine the amount which will remain outstanding. All that Government ought to do towards fixing that amount, is to provide methods to enforce payment by the issuers of such notes, as the holders not wishing to use, return to the issuers for redemption.

AMOUNT FLUCTUATES WITH THE TIMES.

It is true that, in times of speculation, the currency increases. Transactions become more numerous. Higher prices cause the same transactions to absorb more of the medium of payment. There is greater disposition to provide for contemplated or possible operations. There is less care to economize the loss of interest on the amount kept on hand. In times of depression, all these conditions are reversed. During the long period of downward tendencies, from 1837 to 1842, the currency fell, of itself, to about one-half of its amount at the beginning of the period.

THE RELATION OF CURRENCY TO PRICES.

In the ordinary and regular relations between a redeemable currency and prices, the fluctuations in the currency follow, instead of preceding, changes in general prices. The notes in the hands of the public, less the reserve kept for their redemption, form a part of the loan fund of a bank, but that amount is not capable of being increased at the will of the bank, until a speculation has arisen, and higher prices or more transactions have resulted.

Even then, the increase of currency merely provides for the prior increase of prices or of transactions. It may be said, that the increase of currency is a condition without which the increase of prices or transactions could not happen, but that is not true, unless it be shown that no other tool of credit than bank notes could be used.

In cases where a bank originates a speculation by enlarging its loans, it must do so at the expense of its customary reserve.

It is only by artificial changes in the currency — generally made by Government — that the currency itself becomes the primal source of speculation. In fact, it nearly always happens that speculative purchases are originally made on personal credit, evidenced by open accounts or notes of hand. The banks are applied to only at the expiration of the original credit; and then what is wanted is not a continued use of bank notes, but a loan of capital. Bank notes are one of the wheels in the machinery of credit, They have no quality peculiar in its action on prices, or different in its action on prices, from any other part of the machinery of credit. The currency, at its present amount of bank notes and legal tenders, is less than the deposits, and is but a small fraction of the whole existing mass of credits, including book accounts, notes of hand, drafts and bills of exchange. And new forms of credit machinery are capable of being invented indefinitely as when, in September, 1873, the New York Associated Banks created a currency of twenty millions of certificates, to be used in the exchanges between themselves.

BUT CURRENCY ONLY SMALL PART OF CIRCULATORY CREDITS.

It is idle to pronounce the machinery of credit a maniac, dangerous to the community, and then to put only its little finger in a straight jacket.

EXPERIENCE OF ENGLAND.

The experiment of regulating the note circulation only has been completely tried in Great Britain. In 1844, when, on the re-charter of the Bank of England, the bank note circulation of that country was subjected to rules which were supposed to make it fluctuate exactly as if it were coin, it was thought by all but a few great thinkers, that there would ever after be stability of prices and stability of business. But in 1847, in 1857, and in 1866, commercial revulsions of undiminished severity demonstrated the fallacy of these hopes, and of the system on which they were founded. While the note circulation has ever since been confined by law to a nearly constant amount, the deposit circulation has increased many fold. The vicissitudes of credit are as violent as ever. It is apparent that whenever a foreign demand for coin arises, not caused by domestic overtrading, the system creates an artificial scarcity of an important instrument of commerce, and subjects all business to an unnecessary perturbation; that, whenever a panic destroys the credit of inferior dealers, and the interposition of the highest credit is called for to supply the vacuum and revive confidence, the system breaks down — the law limiting the issues of bank notes is suspended with the approval of the Ministry, and with a promise to appeal to Parliament for an Act of indemnity.

WHY AND HOW INCONVERTIBLE CURRENCY DEPRECIATES.

The depreciation of a currency, not convertible into coin, represents the interest and risk, as estimated by the judgment of investors, on a loan payable at the will of the government, without interest — subject to such temporary fluctuations, as are induced by the variations in the supply and demand of coin in which that loan is ultimately payable.

THUS INFLATING PRICES.

There is no doubt that the issue of legal tenders during the civil war hastened and greatly increased that inflation of prices, which naturally resulted from the increased consumption and the waste caused by military operations, and from the diminished production occasioned by so large a withdrawal of workers from their ordinary industries.

It is the nature of credit to be voluntary. It is founded on confidence. Credit, on compulsion, is a solecism. So that a forced loan of capital from all existing private creditors cannot but be costly.

LEGAL TENDER FINANCING.

It was made, in this instance, on a security which bore no interest, and interest on which could only be represented in discount from its par value. It gave to the lender an agreement to pay, which, being instantly due on demand, started in its career a broken and dishonored promise. Every successive holder was left to conjecture when it would be redeemed by the issuer — how far it might be absorbed in the Treasury receipts — whether it could still be paid out to some private creditors — at what loss it could be passed away in new purchases, on a market advancing rapidly and irregularly. Everybody was advised that the Federal Government — unwisely distrusting the intelligence and patriotism of the people — shrank from exercising its borrowing power, supplemented by its taxing power; that, instead of resorting at once to the whole capital of the country capable of being loaned, which forms a vast fund, perhaps thirty or forty times as large as the then existing currency, it chose to begin by debasing that comparatively insignificant part of circulating credits, creating fictitious prices for the commodities and services for which it was next to exchange its bonds, in an expenditure ten times as large as the whole amount of the legal tenders it ventured to put afloat. No man could know how often or how much of legal tenders might be issued, under possible exigencies of the future. It could not be wholly forgotten that such issues, made by our ancestors to sustain the victorious war for national independence, were never redeemed, while the public loans made for the same purposes were all paid. It was remembered that history affords other warning examples to the same effect. These elements of distrust were needlessly invoked. But the system stopped short of the logical completeness of the expedients of the French Convention in 1793. While it compelled the existing private creditor, or anybody who should grant a new credit, to accept payment in legal tenders, it did not assume to regulate the prices of commodities. The seller, therefore, gradually learned to represent the depreciation of the currency in the price of the article he exchanged for it. As compared with gold, the currency, during all the last year of the war, was depreciated to between forty and fifty cents on the dollar, touching at its lowest point thirty-five cents on the dollar.

HOW IT RAISED PRICES BY PROVOKING SPECULATION.

It was not alone by the direct effect of the depreciation of the currency that prices were acted upon; speculation was engendered. Political economy takes little account of the emotional and imaginative nature of man. In long periods, with numerous instances, the average, deduced as a law, may perhaps discard that element. But in a particular instance, or at a particular time, it is often very potent, and must be estimated in any calculation which aims at accuracy.

After a period of rest — when the disposition to activity begins to revive — a slight circumstance often excites a speculation that becomes general. The opening of a new market, an apprehended deficiency in the supply of a commodity, any one of a thousand circumstances, may, in a certain state of the public mind, be a spark to kindle a blaze of speculation throughout the commercial world. How much more, then, might it have been expected that such a governmental policy would inspire and inflame the spirit of speculation? The effect was greatest during the process of a new issue of currency, or while it was anticipated. After the issue was completed, there was generally a subsidence, or a reaction.

AND NEEDLESSLY DOUBLED THE BURDEN OF THE WAR.

The government consumption during the war was mostly of our domestic products. As soon as the channels of traffic could be adapted to the new points of consumption, and the new classes of consumers, there was no more difficulty in the transfer of these products from producers to consumers than in the ordinary operations of commerce during peace.

Governments, in times of public danger, cannot be expected always to adhere to the maxims of economical science; the few, who would firmly trust to the wisest policy, will be often overborne by the advocates of popular expedients dictated by general alarm. If the Federal Government had paid out treasury notes, not made a legal tender, in its own transactions whenever it was convenient, and redeemed them by the proceeds of loans and taxes on their presentation at a central point of commerce, and meanwhile had borrowed at the market rates for its bonds, secured by ample sinking funds, founded on taxation, and had supplemented such loans by all necessary taxes, the sacrifices would not have been half that required by the false system adopted, perhaps the cost of the war would not have been half what it became.

This analysis of the process, by which the changes in the currency operated to produce the effect on prices witnessed by the people is necessary, in order to intelligently discuss the problem now pressed upon us. For the fallacy lurks in many minds, that the quantity of the currency, even when it has become stationary and quiescent, creates by its direct action, a state of prices proportionate to that in quantity.

RELATION OF THE QUANTITY OF CURRENCY TO THE RANGE OF PRICES.

But this fallacy is confuted by our own experience. The premium on gold fell from 185 in July, 1864, to 29 in May, 1865; or rather the currency rose from 35 cents to 77 cents in gold value, while the amount of the currency remained undiminished. The quantity of the currency in the hands of the public — taking the aggregate of the legal tenders and the bank notes, and excluding all of both which are held by the Treasury or by the banks — is now larger than at any former period. The existence of such a quantity has not arrested the tendency to a general fall of prices. The present inconveniences in business, which it is proposed to remedy by a new issue of currency, have originated and gone on to their maturity, while the currency was being distended to its greatest volume.

EXCESS OF CURRENCY, YET FALLING PRICES.

An excess beyond what is capable of being used for the business of society is now, for the first time, distinctly indicated. The movement of the crops in the last Autumn — which requires something like one-tenth addition to the ordinary amount — created no stringency. The banks have voluntarily withdrawn some millions of their circulation. It is probable that the amount capable of being absorbed by the business of the country will continue to fall for a long period.

WHEN INFLATION CANNOT INFLATE.

In such a condition of business, of credit, and of the public temper, a new issue of currency would not cause a rise of prices, unless it were so excessive as to occasion speculative depreciation, or distrust of ultimate redemption. It could not re-animate the dead corpse of exhausted speculation. A period of quiescence must ordinarily precede a renewal of the spirit of adventurous enterprise.

DISTRESS FROM FALLING VALUES AND LACKING CAPITAL.

The distress now felt is incident to the continued fall of values, which is the descending part of the cycle through which they must pass after being forced up to an unnatural elevation. The want felt is a want of capital which the party does not own, and has not the credit to borrow; not a lack of currency. It is caused by investments in enterprises which have turned out to be wholly or partially bad, or which give slower returns than were anticipated — by too much conversion of circulating capital in fixed capital — by excessive undertakings or engagements, induced by a reliance on a credit that was transient. In a period of falling prices, good property becomes less convertible. It loses its circulatory quality. It almost ceases to be a resource to obtain money.

HOW DISTRESS CANNOT BE CURED.

These inconveniences would not be removed, if the government should put out legal tenders and take in a corresponding amount of bonds, or if a bank should deposit bonds, and receive notes in exchange. Still the individual distress for the want of capital would have no additional means to buy or borrow these new issues, which the new owner would obtain only by paying for them. A diminution of the government bonds outstanding, is a condition of the increase of legal tenders or bank notes. If an embarrassed person could obtain the government bonds surrendered or deposited, he would be as much relieved by his power to dispose of them, as he would by a power to dispose of the legal tenders or bank notes. His difficulty is that he is equally unable to obtain either. He has not the means to buy, or the credit to borrow them. What he wants is something to make his bad investments good — his slow investments current; something to make his property convertible — to impart to it a circulating quality, as when there is a general rise of values under a speculative excitement, and everybody is disposed to buy, and everything finds a ready market.

INCREASE OF CURRENCY CANNOT CURE DISTRESS.

He wants something to create in others a disposition to buy, in order that he may be able to sell. This is what, in the present state of things, an increase of the currency will not do. It would not act mechanically on prices. It does not operate by physical means. It simply influences the minds of men. It induces them to buy, and, in the effort to do so, they bid up prices. It is only when the minds of men are disposed to receive an impulse toward buying, that such an effect is produced. When speculators go into the market to influence others to buy, in order that they may sell, the conference usually ends in a fall. Even when speculators go into the market to sell on an event expected to cause a rise, the result is commonly a fall. Everybody cannot get out at once, at the expense of others.

CHANGING FORMS AND VARYING VOLUME OF CIRCULATORY CREDITS.

The amount of currency required by the needs of business is not to be decided by former experience. There is no doubt that, on the first issue of legal tenders, they were largely substituted for other forms of credit. A single case will illustrate: the sudden rise in prices enabled the farmer to become the owner of the floating capital, on which his next year's dealings with the country merchants were to be carried on. The habits of business change to adapt themselves to new conditions. It is possible that the Government might cautiously follow the tendencies of trade, and retire each clearly ascertained surplus without doing any harm. But a withdrawal of any considerable portion of the amount required at the season of the year which creates the largest demand, would produce serious and unnecessary distress. The adoption of a system which should threaten such a result would be very mischievous. The Federal Government is bound to redeem every portion of its issues which the public do not wish to use. Having assumed to monopolize the supply of currency and enacted exclusions against everybody else, it is bound to furnish all which the wants of business require. The case is, as if the Government should undertake to monopolize the supply of lake propellers or canal boats to bring grain to market. If it should not furnish enough, the derangement of business and the distress of producers and consumers would be intolerable. While securing redemption, the Government should organize a system which passively allows the volume of circulating credits to ebb and flow, according to the ever changing wants of business. It should imitate, as closely as possible, the natural laws of trade which it has superseded by artificial contrivances.

EASY CONDITIONS OF RESUMING SPECIE PAYMENTS.

The ability of the Federal Government to resume Specie Payments, is thus simply a question of its command of resources to pay such portions of the circulating credits it has issued, as the public not wishing to use, may return upon it for redemption. The amount to be paid cannot be considered large, in comparison with its financial operations. It has the taxing power, and by reducing its expenditure could accumulate an adequate surplus. It has the borrowing power and good credit. It can make permanent loans and pay the treasury notes which are returned for redemption. It can convert them or fund them into interest-bearing securities. In that case, they would cease to be currency, and would take their place among investments like national, state, municipal, railroad, or other corporate bonds, or any of the numerous forms of moneyed securities, of which many thousand millions are held in our country. The circulatory quality, in securities of equal general credit, is chiefly a question of the rate of interest they bear.

The amount of coin necessary for resumption is, first an adequate reserve to meet the demand for exportation, for which the treasury would become the universal reservoir; and second, a surplus sufficient fully to assure the people that the treasury supply would not be exhausted. The power to command coin as the owner of foreign bills of exchange, or in other forms, would, to a large extent, be equivalent to possessing coin. Beyond such an amount of coin, the question is simply a question of capital.

The exact time of actual resumption, the process, the specific measures, the discreet preparations — these are business questions to be dealt with, in view of the state of trade and of credit operations in our own country, the course of foreign commerce and the condition of the exchanges with other nations, the currents of the precious metals, and the stocks from which a supply would flow without undue disturbance of the markets of other countries. These are matters of detail, to be studied on the facts and figures. They belong to the domain of practical administrative statesmanship.

RESUMPTION LESS COSTLY THAN PRESENT IMPOLICY.

It is quite clear that the problem ought to be worked out, without costing the country anything like such disturbance in its business and industries as the operations of the Federal Government during the last ten years have repeatedly created. The natural causes which affect trade may be foreseen, and all dealers can calculate them with equal advantages in everything, except their own differences in intelligence and judgment. But the action of an official, conducting the largest financial operations in the country, and exercising dominion over the circulatory credits that are part of the machinery by which the mass of private transactions are carried on, cannot but tend to create in all industries, uncertainty, confusion and miscalculation.

HOW PRESENT IMPOLICY HARASSES ALL BUSINESS MEN.

It was said, after the revulsion of 1837, that the barometer of the money market of America hung up in the parlor of the Bank of England. The barometer which hangs up in the Treasury Department at Washington, does not merely indicate conditions and changes of the financial atmosphere; it creates them; its stormy vicissitudes harass the business of the whole country.

The partial cessation of productive industries and the partial want of employment which now exists, are chiefly produced by the fear of the employers that if they carry on their works, they may produce at a loss. The abstinence from purchase by all those classes of dealers, who buy and get up stocks to provide for future consumption, is chiefly caused by the fear of a further decline of prices.

Under these apprehensions, the demand is much less than the ordinary consumption. The instant manufacturers or merchants are convinced that prices have reached the bottom, even for the period of an ordinary business operation, they will begin to resume their function in the economy of trade. The wheels of our complex industries will move, workmen will find employment and, with revived confidence in the future, prosperity will be renewed in its sources. Nothing could be more unwise, more mischievous in its ultimate results, than to interrupt the healing process of nature, by expedients which will fail of affording any real relief, and will be certain to accumulate new materials for another catastrophe.

It has seemed to me fit that, on this occasion, the opinions of the great Commonwealth we represent, which is so largely interested in these questions, should be declared on the side of sound finance, public integrity and national honor; and, in making this communication the medium of an authentic expression on the subject, I follow the example, on similar occasions, of several of the most illustrious of my predecessors.

RESULTS DURING TEN YEARS OF PEACE.

It is now almost ten years since the civil war ceased. That period ought to have sufficed to renew our productive industries, to repair the wastes of our accumulated capital, and to restore to our people a sound and durable prosperity. But an indispensable condition of such results was energy, skill and economy in production, and frugality in public and private consumption.

MISUSED POWERS OF FEDERAL GOVERNMENT.

The Federal Government has all the while been the greatest single power in the country to influence results, not only by its own vast fiscal operations, its dominion over the currency and the business of banking, and the effect of its transactions on investments of capital and on the temporary conditions of the money market, but by the ascendency it acquired during a period of public danger over public opinion and over the conduct of individuals. It is to be deplored that this great capacity for controlling action and for leadership has not conducted us to better results.

The period has been characterized by unsound public finance, an uncertain policy in respect to the currency, a series of speculative excitements tending to unproductive enterprises and unremunerative investments of capital, and terminating in distressing reactions in credit and business; a want of efficiency and economy in production, extravagance in public and private expenditure, enormous taxation and complicated systems of revenue — which have increased the cost and wasted the fruits of that taxation and rendered capital and labor less productive — and frequent spoliation of private and public trusts.

GOVERNMENTS TOO COSTLY.

In the decade, beginning July 1, 1865, the people will have paid in taxes, computed in currency, seven thousand millions of dollars. Three-fifths were for the use of the Federal Government, and two-fifths for the state and municipal governments. It is doubtless true that some portions of the municipal expenditures were for objects not strictly governmental. But it cannot be questioned that much too large a portion of the whole net earnings of industry, and of the whole net income of society, is taken for the purpose of carrying on government in this country. The burden could more easily be borne when values were high, and were ascending. As they recede towards their former level, the taxes consume a larger quantity of the products which have to be sold in order to pay them. They weigh with a constantly increasing severity upon all business and upon all classes. They shrivel up more and more the earnings of labor. This condition of things ought to admonish us, in our respective spheres, to be as abstinent as possible in appropriations for public expenditures. If the cost of government in our country were reduced, as it ought to be, one-third, it would still be larger than a few years ago, taking account of the prices of the products, which, in order to pay that cost, we are compelled to convert into money.

TAXATION TOO BURDENSOME — THE PROSTRATION OF THE SOUTH.

The people are less able to bear such taxation by reason of the want of efficiency and economy in production, and the want of frugality in consumption, generated by the causes already indicated, and also by reason of the failure to completely renew the productive energies and activities of the States of the South, which furnish about half of the exportable commodities of the country, other than specie; which are large consumers of our manufactures and productions, and which make us their carriers, merchants and bankers in all their domestic and foreign transactions.

It has been proudly ascribed to the humanity of our age that, since the surrender at Appomattox, not one life has been sacrificed to the policy of the victorious Government. It is to be wished that we were equally free from the criticism that the retribution visited upon our former adversaries merely conforms to the higher modern estimate of property, as compared with life; that exercising a moral coercion, invigorated by a standing menace of military force, we have held those communities bound in withes, to be plundered by rulers destitute of support in their public opinion, and without title to our own respect or trust.

FINAL ACCEPTANCE OF AMENDMENTS TO FEDERAL CONSTITUTION.

Such has been our course, after and in spite of the fact that these our kindred, in a common ancestry, a common heritage and a common future, had joined at National Conventions in the nomination of candidates and in the declaration of principles and purposes, which form an authentic acceptance of the results of the war, embodied in the last three amendments to the organic law of the Federal Union, and that they had by the suffrages of all their voters, at the last national election, completed the proof that now they only seek to share with us and to maintain the common rights of American local self-government, in a fraternal union, under the old flag with "one Constitution and one destiny."

There should be no misunderstanding as to this position of our Southern brethren, or of any portion of our fellow-citizens. The questions settled by the war are never to be reopened.

The adoption of the XIIIth, XIVth and XVth Amendments to the Federal Constitution closed one great era in our politics. It marked the end forever of the system of human slavery, and of the struggles that grew out of that system. These amendments have been conclusively adopted, and they have been accepted in good faith by all political organizations, and the people of all sections. They close the chapter, they are and must be final; all parties hereafter must accept and stand upon them, and henceforth our politics are to turn upon questions of the present and the future, not upon those of the settled and final Past.

THE PEOPLE MUST AGAIN ATTEND TO PUBLIC AFFAIRS.

The nobler motives of humanity concur with our interests in making us hail, with heartfelt congratulations, a real and durable peace between populations unnaturally estranged. The time is ripe to discard all memories of buried strifes, except as a warning against their renewal; to join all together to build anew the solid foundations of American self-government. For nearly a generation, the controversies, which led to fratricidal conflict have drawn away the attention of the people from the questions of administration, which involve every interest and duty of good government. The culture, the training and the practice of our people in the ordinary conduct of public affairs, have been falling into disuse. Meanwhile the primitive simplicity of institutions and of society, in which government was little felt, and could be neglected with comparative impunity, has been passing away. If public necessities must wring so much from the earnings of individuals, taxation must become scientific. In our new condition all the problems of administration have become more difficult. They call for more intellect and more knowledge of the experience of other countries. They need to become the engrossing theme of the public thought in the discussions of the press and in the competition of parties, which is the process of free institutions. The people must once more give their minds to questions that concern the ordinary conduct of government, if they would have our country to start afresh in a career of prosperity and renown.

SAMUEL J. TILDEN.

SPECIAL MESSAGES.

January 6. To the Assembly: Transmitting the annual report of the Adjutant General.

January 12. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *January* 12, 1875.

"On your re-assembling I deem it to be my duty to invite your attention to the grave events which have happened in our sister state of Louisiana. The interval of your adjournment has afforded you an opportunity to receive the statements of the parties concerned in those occurrences, particularly that of Lieutenant General Sheridan, in his official report to the secretary of war, dated January 8, 1875. You are now enabled to know with certainty all the facts necessary to form a just and deliberate judgment as to the nature of the principal acts which have created so much public excitement.

According to the official report of Lieutenant General Sheridan, the United States soldiers entered the house of representatives of the state of Louisiana, while that body was in session, and removed from it five of its members.

The pretexts for this act are:

FIRST — That it was done under directions from the governor of the state, recognized by the president.

SECOND — That the persons removed 'had been illegally seated,' and 'had no legal right to be there.'

THIRD — That a fear existed in the mind of Lieutenant General Sheridan that, in some undefined contingency, violence might happen.

With respect to the first and second of these pretexts, it is a decisive answer — that the Louisiana house of representatives had, by the constitution of that state, the exclusive judgment as to the right of these members to seats; that its judgment is subject to no review by any judicial authority, still less a review by the governor or by any officer of the United States army; that its judgment in favor of these members thus forcibly removed is binding in law and conclusive upon the governor and Lieutenant General Sheridan, and upon every other person.

In respect to the third pretext, the fear in the mind of Lieutenant General Sheridan of possible future violence, where no violence really existed, is not only no lawful occasion but not even an excuse for an invasion of the right of the house of representatives of Louisiana to judge for itself of the title to seats of its own members.

Interference by United States soldiers was not only unlawful, but it was without the color of legality. It was an act of naked physical force in violation of the laws and constitution of Louisiana and of the laws and constitution of the United States.

There is a case of a disputed seat in the senate of this state now pending. Another was determined at the last session. The transaction in Louisiana is as if, at the instance of the governor of this state, General Hancock, commanding in this department, or an officer specially deputed by the president should send a file of federal soldiers and remove the incumbent to whom the seat had been adjudged by the senate. That disorders have formerly existed in Louisiana makes no difference. For the laws — to which the president and congress are parties — recognize the complete restoration of her autonomy. The right of her legislative bodies to determine the title of their members is as perfect and absolute as the right of the assembly or the senate of New York.

The animus of the transaction, as indicated by the correspondence between Lieutenant General Sheridan and the secretary of war, is infinitely worse than the transaction itself. On the day after the event, Lieutenant General Sheridan sent a dispatch proposing that a class of citizens, indefinite in number and description, should be declared, either by act of congress or by proclamation of the president, to be banditti; and then intimates his purpose to try them and execute them by military commission. On the next day, General Belknap, the secretary of war, telegraphed to General Sheridan that 'The president and all of us have full confidence in and thoroughly approve your course.'

The nature of the acts thus proposed by the officer second in command of the army of the United States, and thus adopted and sanctioned by the president and his constitutional advisers is plainly declared by the common law.

In the recent case of the Queen v. Nelson and Brand,[k] the present lord chief justice of England, in delivering the charge to the grand jury, declared that 'supposing that there is no jurisdiction at all, that the whole proceeding is *coram non judice,* that the judicial functions are exercised by persons who have no judicial authority or power, and a man's life is taken, that is murder; for murder is putting a man to death without a justification, or without any of those mitigating circumstances which reduce the crime of murder to one of a lower degree. Thus, in the case put by Lord Coke, of a lieutenant having a commission of martial law, who puts a man to death by martial law in times of peace, that, says Lord Coke, is murder.'

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[k] Cockburn, L. C. J. See charge, also Law Magazine, London, 1867, Vol. 23, p. 222.

Such are the established doctrines of the jurists and courts of this country and of England. Such is the voice of common law — glorious jurisprudence of freedom! birthright of every American citizen! Its stern logic declares that such an execution of any human being, as was proposed and sanctioned in this correspondence, would be murder by our laws; and that every functionary — civil or military — who should instigate it, aid or abet it, or become, in any manner, a party to it before the fact, would be guilty, as a principal, in that crime.

The patriot-statesmen who achieved our national independence, and formed our institutions of free government, foreboded if we should ever fall in intestine strife, that the ideas it would inspire in military minds — of insubordination to the laws and of uncivic ambition — and the habit it would generate in the people — of acquiescence in acts of unlawful military violence — would imperil, if not destroy, civil liberty. Events compelled us to a manly choice of confronting these dangers in a struggle to save our country from dismemberment, and to vindicate the just rights of the federal union. Having triumphed in that struggle now forever closed, we are made sensible of the wise foresight of the founders of our freedom in their warning of the opposite dangers which would attend our success. Those dangers come to us, in acts of illegal military violence, committed in times of peace — in the usurpation by the soldiery of a power to decide the membership of our legislative assemblies, whose right to judge exclusively in such cases, has ever been guarded with peculiar jealousy by our race — in the proposal, made and accepted by our highest civil and military functionaries — to subject our citizens to tribunals in which a military officer will decide without appeal what persons, happening to be found in the locality, shall be sent to them for trial — will appoint the members of the court — will review and confirm or change the judgment and the sentence — and may order instant execution; and in which the accused will be tried in secret and without counsel for his defense. This proposition is thus made, and thus sanctioned — notwithstanding that, for similar acts, our English ancestors sent the first Charles to the scaffold and expelled the second James from the throne; and our forefathers — exiled by kindred tyrannies and planting freedom in the wilderness — were careful to insert in our constitution, positive prohibitions against the application to any but military persons of such tribunals.

Unless such proposition, so made and so sanctioned, shall be condemned by a public reprobation which will make it memorable as a warning to all future officers of the state and the army — the decay of the jealous spirit of freedom — the loss of our ancestral traditions of liberty acquired through ages of conflict and sacrifice; the education of the present generation to servile acquiescence in the maxims and the practices of tyranny, will have realized the fears of Washington, and Jay and Clinton and their compatriots.

New York, first of the commonwealths of the American union, in population, in resources, and in military power, should declare her sentiments on this occasion, with a distinctness, a dignity and a solemn emphasis, which will command the thoughtful attention of congress, of her sister states and of the people of our whole country. With the same unanimity with which she upheld the arms of the union in the past conflict, she now addresses herself to the great and most sacred duty of re-establishing civil liberty and the personal rights of individuals — of restoring the ideas and habits of freedom, and of re-asserting the supremacy of the civil authority over the military power throughout the republic.[12]

SAMUEL J. TILDEN."

January 12. To the Senate: Transmitting a communication from the War Department relative to the cession to the United States of certain property at Willet's Point.[13] For communication see Senate Document, No. 10.

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[12] On the 14th of January, the Assembly passed the following resolutions:

"*Resolved*, That the people of New York, through their representatives in the Legislature, deprecate and condemn the recent interference of the military forces of the United States in the organization of the Legislature of Louisiana as a gross violation of the constitutional rights of that State and an implied menace to the rights of other States.

"*Resolved*, That we view with alarm the growing tendency of the general government to subordinate the civil to the military power, in total disregard of all constitutional guarantees, and even of the very spirit and essence of republican institutions.

"*Resolved*, That we especially condemn the proposition of Lieut. General Sheridan and its approval by the Secretary of War, in the name of the administration, to subject citizens to trial by military commission in time of peace."

The foregoing resolutions were concurrent in form, but were not concurred in by the Senate. That body on the 15th adopted the following resolution:

"*Resolved*, That we, the representatives of the people of the State of New York, in Senate assembled, while affirming our unshaken confidence in the patriotism, fidelity, and integrity of Lieutenant-General Philip H. Sheridan, we nevertheless hereby condemn the sentiment of the telegraphic dispatch of General Sheridan, dated at New Orleans, La., January 5, 1875, to the Secretary of War, which suggests that Congress should pass a law declaring a large class of the people of Louisiana 'banditti,' in order that 'they could be tried by a military commission;' and which also suggests 'it is possible that, if the President would issue a proclamation declaring these same citizens banditti, no further action need be taken, except that which would devolve upon himself;' that we regard the recomendations contained in said dispatch as despotic in their nature, unprecedented in the history of our country, unwarranted by the present situation of affairs in Louisiana, so far as this body is, at this time, advised, and tending to the destruction of representative government and constitutional liberty."

[13] By chapter 114, passed April 17, jurisdiction was ceded to the United States over land to be acquired at Willet's Point on Long Island in Queens county, for military purposes and fortifications, "with concurrent jurisdiction over all the contiguous shores, flats and waters within 400 feet from low water mark, measured toward the channel." The act also authorized condemnation proceedings if the federal government could not agree with owners of property for the purchase thereof.

January 12. To the Assembly: Transmitting the report of the Captain of the Port of New York.

January 18. To the Senate: Transmitting the following communication from the Governor of New Jersey, relative to the boundary line between that State and New York, and inviting the attention of the Legislature to the subject:

STATE OF NEW JERSEY:

EXECUTIVE DEPARTMENT,
TRENTON, *January* 4, 1875.

His Excellency SAMUEL J. TILDEN, Governor of New York:

SIR.—I send you copy of the report of Prof. Cook, State Geologist, upon the northern boundary of New Jersey.

The facts therein stated prove that the line run during the last century did not answer the description in the grant from the Duke of York, conveying the territory to Cartaret and Berkley.

It appears that one-third of the monuments which originally marked that line are gone, and that the boundary between the states then run, cannot now be traced.

As questions involving jurisdiction may arise, it is important that the true line be ascertained and marked with permanent monuments protected by law. It should be made to answer the description in the grant.

In any legislation on the subject, the title to land on either side of the boundary would, of course, be confirmed to the present owners.

In my annual message I will direct the attention of the Legislature of this state to the subject, and recommend that the authorities of the state of New York be invited to appoint commissioners to join those which may be appointed by New Jersey, in determining the true location of the boundary line and marking it by monuments.

Respectfully, your ob't ser't.,

JOEL PARKER.

January 22. To the Senate: Transmitting the report of the Commissioners of Quarantine, with the report of the Health Officer, and also the report of the Commissioners for preparing a new boarding station.

January 22. To the Assembly: Transmitting a resolution adopted on the 15th of January, 1875, by the Legislature of Virginia protesting against federal interference in Louisiana, which is described in Governor Tilden's special message of January 12.

January 28. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *January* 28, 1875.

"I have the honor to transmit herewith a communication from the governor of New Jersey, relating to quarantine jurisdiction over the waters adjacent to the port of New York, together with a copy of a concurrent resolution of the legislature of that state; and also a report of the commissioners appointed under chapter 613 of the Laws of 1865, to whom the matter was referred by me for information, and to report whether in their opinion any action is necessary or desirable.[14]

SAMUEL J. TILDEN."

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[14] The Legislature adopted the following concurrent resolution:

"WHEREAS, In the year eighteen hundred and thirty-three the States of New York and New Jersey appointed a joint commission to define the boundary line between said States, and their jurisdiction, respectively, over the waters of the New York harbor, and

"WHEREAS, Encroachments are being constantly made upon said harbor, on both sides of the Hudson river, by citizens of both States; therefore

"*Resolved*, That the acting commissioners appointed by the Governor to discharge the duty imposed by section seven of chapter six hundred and thirteen of the Laws of eighteen hundred and sixty-five, be authorized to meet the like number of commissioners to be appointed by the Governor of New Jersey, and with them, as soon as may be, to ascertain where the exterior lines for said harbor, lying between said States, are located, and whether any and what encroachments have been made upon such harbor; such commissioners to be authorized to employ such persons as may be necessary to assist them in the performance of aforesaid service, and to be required to report their proceed-

COMMUNICATION FROM GOVERNOR OF NEW JERSEY.

STATE OF NEW JERSEY:

EXECUTIVE DEPARTMENT,
TRENTON, *January* 4, 1875.

His Excellency, SAMUEL J. TILDEN, Governor of New York:

SIR.—I enclose copy of concurrent resolution passed at the last session of the New Jersey Legislature.

The complaint of owners and masters of our coasting vessels proceed, as I am informed, not only from the fact that they are compelled to pay fees at quarantine for services which seem to them unnecessary, but also from the great detention and loss of time to which they are subjected. They regard the present quarantine laws, as applied to them, extremely onerous, especially when their vessels sail from ports not liable to infectious diseases, and from which there are daily, numerous arrivals in New York of passengers by railroad trains.

I am not aware that you have the power without further legislation to change existing regulations so as to give the desired relief. I suppose the object hoped to be gained by passing the resolution was to have the matter presented to your notice with the hope you would direct the attention of the legislature of New York to the subject, and recommend that the law be so modified as to exempt from detention and payment of quarantine fees, at least all coasting vessels sailing from ports north of the Carolinas.

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ings, and the expenses (not exceeding the sum of five thousand dollars) thereof, to the Legislature of this State, at its next annual meeting; and in case of death or resignation of said commissioners on the part of this State, or either of them, the Governor of this State is hereby empowered to fill the vacancy or vacancies so occurring. But the commissioners appointed under this resolution shall receive no pay and incur no expense until commissioners for a similar purpose are appointed on the part of the State of New Jersey.

"*Resolved*, That the Governor of this State be requested to transmit a duly certified copy of the foregoing resolution to the Governor of the State of New Jersey, to be laid before the Legislature of that State."

I am informed that owners of vessels in New York also complain of the quarantine laws applicable to the coasting trade and will join in requesting their modification.

Very respectfully your obedient servant,

(Signed) JOEL PARKER.

CONCURRENT RESOLUTION OF THE LEGISLATURE OF NEW JERSEY.

"*Whereas,* Under the statutes now existing in the state of New York, the masters of New Jersey vessels employed in the coasting trade are obliged to perform quarantine, and are thereby unnecessarily detained in the prosecution of a legitimate business; and,

Whereas, The legislature of this state can claim no jurisdiction over the waters lying between the two states, excepting that of a concurrent nature; therefore,

Be it Resolved, by the senate of the state of New Jersey (house of assembly concurring), that the governor of this state be, and he is hereby, requested to confer with the governor of the state of New York, with a view to such modification of said laws as shall relieve our vessel owners and masters from the delay and embarrassment occasioned thereby."

REPORT OF COMMISSIONERS.

To His Excellency SAMUEL J. TILDEN, Governor:

The undersigned commissioners in regard to quarantine jurisdiction between New York and New Jersey appointed under chapter 613, Laws of 1865, to whom you have referred the letter of His Excellency the governor of the state of New Jersey, with the concurrent resolution of the legislature of that state in regard to such quarantine jurisdiction, copies of which are hereto annexed, have the honor, after a careful consideration of the subject, to report that the unsettled boundary between New York and New Jersey was the cause of so much confusion and embarrassment from the earliest date, that both states, acting through their legislatures, appointed a commission to adjust questions of difference. The legislature of New Jersey on the 6th of February, 1833, (see statutes of New Jersey for 1833, p. 54) appointed Theodore Frelinghuysen, James Parker and Lucius J. C. Robinson to meet Benjamin F. Butler, Peter Augustus Jay and Henry Seymour, commissioners appointed on the part of New York by the legislature January 18, 1833 (see New York statutes, chap. 6, 1833.) These commissioners adjusted all outstanding differences in an agreement which was to be binding on the two states when confirmed by their legislatures respectively, and approved by congress.

(See accompanying map, on which the quarantine jurisdiction of the two states is shown as agreed upon by the commissioners: the waters subject to New York quarantine being in blue, and those subject to New Jersey in green.)

In this agreement, (see Revised Statutes, fifth ed., vol. 1, p. 80) the state of New York, (see art. third) was to have and enjoy *exclusive jurisdiction of and over all the waters of the bay of New York,* and of and over the waters of Hudson river lying west of Manhattan island, and to the south of Spuyten-duyvel creek, and of and over the lands covered by the said waters *to the low water mark on the westerly or New Jersey side thereof,* subject to the following rights of property and of jurisdiction of the state of New Jersey, that is to say: 1. The state of New Jersey shall have the exclusive right of property in and to land under water lying west of the middle of the bay of New York and west of the middle of that part of the Hudson river which lies between Manhattan Island and New Jersey. 2. The state of New Jersey shall have the exclusive jurisdiction of and over the wharves, docks and improvements made and to be made, on the shore of the said state and over all vessels aground on said shore or fastened to any such wharf or dock, *except that the said vessels shall be subject to the quarantine or health laws and laws in relation to passengers of the state of New York which now exist or which may hereafter* *be passed.* In article fourth it was provided that the state of New York should have *exclusive quarantine jurisdiction of and over all the waters of the Kill von Kull, between Staten Island and New Jersey, to the westernmost end of Shooter's Island; and also over the waters of the sound from said island to the mouth of Woodbridge creek, as to all vessels bound to any port in the state of New York.*

By the fifth article it was declared that the state of New Jersey should have and enjoy exclusive jurisdiction of and over all the waters of the sound between Staten Island and New Jersey, lying south of Woodbridge creek, and of and over all the waters of Raritan bay lying westward of a line drawn from Prince's bay light house to the mouth of Matteawan creek subject to the right of property of the state of New York in the lands under water between the middle of said waters and Staten Island and subject to the jurisdiction of the said state over the wharves and docks on the shores of Staten Island, and over the vessels aground on said shores, or fastened to said docks and wharves, *provided, however, that such vessels were to be subject to the quarantine laws of the state of New Jersey.*

It will be seen that vessels while in the sound between Staten Island and New Jersey, became subject to the New York quarantine laws after passing Woodbridge creek, if bound for any port in the state of New York.

This agreement became a law of the state of New York, in due form on the fifth of February, 1834 (see New York statutes 1834, chapter 8), and of the state of New Jersey, February 6, 1834, (see statutes of New Jersey, 1834, page 118.) It was formally ratified by act of congress, approved June the 28th, 1834 (see U. S. Statutes at large [L. & B.] vol. 4, p. 708.) It covers the whole question of the quarantine jurisdiction of the state of New York. New York has not used all the powers conferred in this agreement, for while her quarantine jurisdiction covers the whole of New York harbor, it would authorize the detention of vessels passing through the southern waters of the bay to Perth Amboy. Vessels bound to Hoboken and Jersey City, are, by this agreement, subject to New York quarantine jurisdiction; for these places are part of the port of New York. Five of the large trans-atlantic steamship lines have their docks at these places, and over two hundred steamship arrivals from Europe to the port of New York land, during the year, at the docks of Hoboken and Jersey City. From these steamships, an average of over 100,000 passengers annually go by the ferry boats to New York, and the masters of the vessels enter them at the New York custom house, to which they report immediately on arrival, and from which they clear when ready to sail. If these wharves were exempt from the jurisdiction of the New York quarantine law, any vessel whose master claimed to be bound to them, might anchor opposite New York or go to dock on the New Jersey side, and yet transact all his business by ferry and lighter with that city.

It is evident that there could not, with safety, be two distinct quarantine authorities over vessels bound to different docks in the same port; the utter futility of any effort at protection from imported disease under such circumstances, in which New Jersey has an interest equal to New York, was undoubtedly the prevailing reason, which induced the commission of 1834 to adopt the only agreement between the two states, which was practicable for this purpose, and which so promptly and without change received the ratifications of both states and the United States, and became a law, unquestioned either as to its legality, justice or wisdom to this day.

The question as to what coasting vessels should be subject to quarantine was a matter of discussion and trial even before the present century. Certain southern ports, from their hot climate in summer and on account of the epidemics of yellow fever to which they were frequently subject, with a commercial proximity to places nearly always infected during part of the year, were watched with solicitude. This was especially so after they had introduced, on several occasions, epidemics into New York, causing immense loss of life and paralyzing business, besides subjecting New York commerce to almost prohibitory quarantine restrictions in foreign ports. The legislation of the state of New York designed to prevent the recurrence of such calamities, has apparently been always based upon the statistics and facts of the epidemics themselves, with little and very cautious regard to theoretical views. Thus, the ports from which yellow fever had reached New York were included among those the vessels from which were subject to quarantine supervision, only when it was shown that there was danger from them. Vessels at sea were recognized in the earliest epidemics as nests in which the yellow fever infection acquired its epidemic force and became contagious, even while those sick with the disease were not radiating centers for the morbid poison unless they carried with them in their clothes or baggage to the shore the infection developed on the vessel.

When railroads became a means of intercommunication they were watched with jealous care lest they too should introduce the disease. Experience, however, has shown that though they are dangerous mediums for the dissemination of small-pox and cholera, they do not introduce yellow fever into healthy localities; individuals with the disease on them might go to other places by rail and die of yellow fever there, but the infecting power of the fever did not travel with them, for cars are not the *locales morbi* as ships are; hence, in ordinary times, the laws need not be modified to meet risks from railroad travel while it has been strongly demonstrated that the disease is always transmitted from shipboard.

Many epidemics of yellow fever have devastated New York; as early as 1719 one is recorded and another about 1761; during the thirty-four years prior to 1809, there were seventeen visitations of this terrible disease. Those of

1791, 1795, 1798, 1803 and 1805, were extensive and fatal epidemics as were those of 1819 and 1822. In 1809 it was at Brooklyn; all are familiar with the epidemics of 1856 and 1857 succeeding the pestilence in Norfolk of 1855.

The quarantine laws affecting coasting vessels were modified during the first seventy years of the New York quarantine to meet these varying requirements as developed by disease.

In 1797 coasting vessels from any place south of Cape May were required by the law to report at quarantine on arrival. In 1806 vessels from the Mississippi river during the summer months were detained, in all cases, for four days at quarantine, and longer, if decided necessary. In 1809 vessels from America south of Georgia, were made subject to quarantine for the entire year, and vessels from south of Cape May during the warm months; during the same period vessels from south of Georgia were not permitted to go to dock, but were required to discharge their cargoes by lighters in the stream, which cargoes were limited to certain parts of New York for their storage. In 1820 all vessels from ports in America, south of Cape Henlopen, were subject to quarantine, which continued until 1852, when, by the law, all vessels from the capes of Virginia, owing to the persistent efforts of persons having interest in the shipping of those places, were exempted from quarantine unless they had sickness on board.

The epidemics of 1855, 1856, 1857, followed this change in law, and the consequent public exasperation against quarantine, resulted in the destruction, by a mob, of the quarantine establishment in 1857. During the next five years there was much confusion in the administration of that department, from want of proper facilities, which were supplied in the law reorganizing the department, passed in 1863. In this act the ill-advised repeal of the quarantine requirement for Virginia vessels, which had furnished protection and safety from 1820 to 1852, was corrected and the law restored.

CONCLUSION.

It will be seen that the matter under consideration was regulated by the commission of 1834, which was composed of an equal number of commissioners from New York and New Jersey. Their report was made the law of these states respectively, and stands in the same language in the statutes of both states, and became a law of the United States by the ratification of Congress; it left no question of concurrent jurisdiction between the states, but by their concurring action adjusted all questions of jurisdiction, and it can only be changed by the united action of the two states and with the consent of congress.

When this agreement was made in 1834, coasting vessels, the same as under the present law, from the capes of Virginia and all places south of there, were required to report at the New York quarantine. The law requiring this had been passed in 1820, and therefore was then fourteen years in operation.

The quarantine fees were fixed by the law of 1820, fourteen years before the convention, and have never been changed since. They are precisely the same as they were when the agreement of the two states adjusted the jurisdiction of the New York quarantine law.

In the history of the port of New York, there has never before been so efficient a system of quarantine, conducted with as little complaint as at the present time. This is shown by the repeated testimonials of vessel owners and shipping merchants. Some of the owners of coasting vessels who at one time secured exemption from quarantine restriction, may desire it now, but the fearful experience of five years with disease after many years of security admonishes us that it is a grave question whether the experiment should again be tried. Experience has fully demonstrated the fact that protection from yellow fever can only be secure and reliable when the efforts are made before the epidemic appears.

The delays incident to vessels arriving at the New York quarantine are only in the case of infection and sickness, and then for the shortest time compatible with safety, all other vessels are passed without detention.

After a careful review of the facts and the laws of both states, and the United States, bearing upon the question of quarantine jurisdiction and discipline, we are not prepared to recommend any change in the existing laws and regulations in relation to the subject of quarantine.

All of which is respectfully submitted.

NELSON K. HOPKINS,
Commissioner.
DANIEL PRATT,
Attorney General, *ex officio* Commissioner.

Dated Albany, January 27, 1875.

February 2. To the Legislature: Transmitting the annual report of the Cooper Union for the Advancement of Science and Art.

February 2. To the Assembly: Transmitting resolutions adopted by the legislatures of Ohio, Missouri, Georgia and Pennsylvania protesting against the expulsion of certain members of the Legislature of Louisiana by federal authority. [See special message of January 12.]

February 3. To the Senate: Transmitting the following communication from the Director General of the International Exhibition to be held at Philadelphia in 1876. [See note 3.]

"UNITED STATES CENTENNIAL COMMISSION,
PHILADELPHIA, *January* 30, 1875.

"To His Excellency SAMUEL J. TILDEN,
Governor of New York:

In behalf of the United States Centennial Commission, I have the honor to direct your attention to several subjects connected with the International Exhibition of 1876, of great importance to your commonwealth, and for which provision should be made *this year*.

It has already become manifest that a large proportion of the articles to be exhibited, will be provided for, in a creditable manner by the manufacturers and producers of the several states. But there remain large classes of objects whose collection is essential to a complete representation of the material and social condition of the community, yet which it is not to the interest or within the power of an individual to collect. Of this description are the unwrought natural resources of the land, such as its minerals, soils, woods, vegetation, etc. It is so largely upon their wealth in this direction that the growth of states depends, that this department of the exhibition will be critically studied by those interested in the problems of immigration and of the investment of capital. On merely economical grounds, every state would do well to provide liberally for the thorough and exhaustive representation of the actual and possible products of its soil. Another department that should be inaugurated and prepared under the auspices of the state governments, is that which may be termed the historical and statistical. Unless done by official authority, there will not be a complete presentation of such matters as the history of the early settlement of the state, its physical features, climate, geographical position, government, law and punishment of crime, system of state and municipal taxation, revenue and expenditure, benevolent institutions and charities, education; scientific, industrial, commercial, learned and religious societies, agricultural and manufacturing interests, the extent and effects of railroads and other means of transportation, the history and growth in population and wealth of the state. All these subjects, among others, ought to be represented so as to afford a summary view of the history, progress and present condition of every state. Unless this is accomplished, the exhibition will seriously fail in that part of its purpose which contemplates a representation of the nation's growth during the first century of its existence.

Official resources only are adequate to the satisfactory execution of the task thus proposed. It is hoped, therefore, that each of the states, either by legislative action or otherwise, will adopt such measures as may be deemed necessary to empower existing organizations or agencies to be created to prepare an exhibition of its native resources and moral and political advancement as herein indicated. A collective representation of this character will not only be interesting as illustrating the prosperity of the country, but will also be of inestimable value for preservation in the archives of the nation, as a correct history of the birth and progress of the several communities that have contributed, during the century, to the growth and strength of the union of states.

How far your state will participate in these suggestions is a question that I have the honor to most respectfully submit and recommend to your early consideration.

Your obedient servant,
A. T. GOSHORN,
Director-General."

February 10. To the Assembly: Transmitting resolutions adopted by the Legislature of West Virginia, condemning federal interference in local affairs in Louisiana, and especially the use of troops to expel certain members of the House of Representatives of that State. [See special message of January 12, and Assembly Document No. 59.]

February 12. To the Assembly: Transmitting resolutions adopted by the Legislature of Delaware relating to the recent occurrences in the State of Louisiana. [See Assembly Document No. 66.]

February 18. To the Senate: Transmitting the annual report of the trustees of the Sailors Snug Harbor.

March 16. To the Assembly: Transmitting a communication from Hon. William W. Belknap, Secretary of War, requesting the passage of an act by the Legislature ceding to the United States jurisdiction over the land at West Point purchased by the general government for purposes connected with the military academy. The Secretary's letter quotes the act of March 2, 1826, ceding jurisdiction over lands at West Point, and recites the purchase of additional land at different times, but that the consent of the state to the acquisition of such land by the federal government had not yet been obtained.[15] [See Assembly Document No. 97.]

March 19. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *March* 19, 1875.

"I have received a petition from forwarders, boatmen and others engaged in transportation on the canals of this state, representing that the depressed state of their business calls for legislation, and necessitates a reduction of tolls; and requesting me to look into the condition of the canal commerce, and to make such recommendations to the legislature as will lead to measures of relief.

Respectful consideration is due to so large and important a class of our business men. They are proprietors of about 6,000 boats, which are said to give employment directly to 30,000 persons, and indirectly to 20,000 others. They are in the peculiar relation of partners of the state in a vast internal commerce; owning and managing the equipment while the state owns and manages the body of the canals. The state therefore not only has a common interest in the preservation of the joint business, but has a distinct and special interest in the ability of its partners to continue to perform their functions, without which the joint business could not be transacted. It cannot afford to suffer the equipment of the canals to be broken up; to allow a dispersion of the traffic which, if once lost, will not be easily regained; or to omit any measures of retrenchment in expenditure or economy of administration which will enable it and its partners to meet successfully the increasing competition of the railways with each other and with water transportation.

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[15] Chapter 359, passed May 15, ceded to the United States jurisdiction over certain land at West Point for purposes connected with the military academy.

Impressed with the considerations which induce a liberal policy on the part of the state toward its partners in the internal commerce it has seen fit to undertake, I am, on the one hand, predisposed to every practical and just measure for enfranchising trade and industry and cheapening the interchange of commodities, and, on the other, to listen to the rightful complaints of our people against the extreme burden of our present taxation and the prodigal and wasteful expenditure in connection with the canals, which is one of the main causes of such taxation.

I have, therefore, felt it my duty to devote the intervals of time I could command to a personal investigation of the subject in order to be able to recommend to you such specific measures as the exigency seems to require, in the direction indicated in the following passage of the message I had the honor to communicate at the beginning of your session:

'A careful investigation whether the net incomes of the canals retained cannot be increased, ought to precede a surrender of what little now exist. Ordinary repairs should be scrutinized with a view to retrenching their cost, and to obtaining the largest possible results from the outlay.

* * * All improvements should be governed by a plan and purpose leading to definite results; and, instead of scattering expenditures on imperfect constructions, should aim to complete and make available the specific parts undertaken. Unity of administration and of system, both in respect to repairs and improvements, should be established.'

PROBABLE INCOME OF THE CANALS.

Exhibit A is a comparative monthly statement of the tolls on all the canals for the years 1873 and 1874. It shows that during the months of October and November and a few days in December, which fall within the present fiscal year, in which period about one-quarter of the tolls of the year were collected, the decrease of tolls is from $836,123.27 to $638,132.96, or $197,990.31. The decrease is about one-fourth of that portion of the tolls. A corresponding decrease for the months of May, June, July, August and September, 1875, as compared with the same months of 1874, would amount to $600,000. That would leave the tolls for the fiscal year of 1875, at $2,037,000.

Assuming them to realize $2,250,000, we are next to find the probable effect of the reduction of rates which is now proposed.

Exhibit B is a statement of the effect of the reduction in the rates proposed computed on the tolls of the calendar year of 1874.

If a similar computation be made on $2,250,000, instead of $2,637,070, the reduction of receipts to be produced by the lowering of the rates would be $534,832. The gross tolls accruing from all the canals for the fiscal year ending September 30, 1875, would be $1,715,168.

This diminution of tolls presents in a strong light not only the general depression of commerce, but particularly that of the special business of the boatmen and forwarders.

TAXATION FOR CANAL PURPOSES.

During five years from Oct. 1, 1869, *to Sept.* 30, 1874.

The public mind is apt to be confused by the various methods in which the complex accounts of the state are kept. A careful analysis and comparison of those accounts enables the following results to be stated in a simple form:

The total amount of the tolls on all the canals during the five fiscal years ending September 30, 1874, was		$15,058,361.75
The aggregate of ordinary expenses and ordinary repairs during the same period, was		9,202,434.23
The apparent surplus was		$5,855,927.52
The aggregate of extraordinary repairs during the same five years, was		$10,960,624.84
Deduct the apparent surplus		5,855,927.52
Real deficiency, being excess of repairs, ordinary and extraordinary, over the whole tolls		$5,104,697.32
Other payments were:		
Interest	$2,908,617.46	
Cost of premium on gold	703,468.35	
Cost of premium on stock purchased	31,736.00	
Transfer expenses, etc.	21,238.49	
		$3,665,060.30
Actual cost, exclusive of reduction of debt		$8,769,757.62
Payment of debt:		
Canal debt	$2,334,350.00	

General Fund debt, over the reduction of moneys in sinking funds	$2,552,132.28	
		$4,886,482.28
Contribution to General Fund............		200,000.00
		$13,856,239.90
The taxes levied for these purposes during the same period, were..................		$14,789,848.25

All these payments are directly for canal purposes, except $2,552,132.28, which is in reduction of the General Fund debt, and $200,000 which was supplied to the General Fund.

These two payments also are, indirectly, of the same character. They but replace fresh advances made by the General Fund, to the canals.

In the five years anterior to the period under consideration, from October 1, 1864, to September 30, 1869, the taxes levied to meet deficiencies in the sinking fund, were $1,873,030.54, and the taxes levied for extraordinary repairs, awards, etc., were $6,322,632.52, making $8,195,663.06.

The constitution (Art. VII, sec. 5) provides that ' Every contribution or advance to the canals or their debt from any source, other than their direct revenues, shall, with quarterly interest, at the rates then current, be repaid into the treasury, for the use of the state, out of the canal revenues as soon as it can be done consistently with the just rights of the creditors holding the said canal debt.'

In citing this mandate of the constitution, it is not intended to revive the illusion that even the most recent advances of the state for the use of the canals will ever be restored to the treasury. There is little probability that they can be regarded as investments capable of producing a reliable income. So far as these enormous outlays have been usefully expended, the state will have to find its compensation, for the taxes it has imposed upon the people, in the indirect benefits of its efforts to cheapen the interchange of commodities.

Exhibit C shows the expenditures for extraordinary repairs, etc., for each of the five years.

Exhibit D shows the expenditures from taxation for the sinking funds during the same period.

Exhibit E shows the specific application of the surplus of tolls over ordinary expenses and repairs.

CHARACTER OF THE EXPENDITURE.

Some items of the outlay attract attention. On the canals which the amendment of the constitution authorizes the legislature to abandon, there was expended for:

Extension of the Chenango canal.........	$676,158.68
Black River improvement................	15,400.00
Oneida Lake	100,000.00
Extraordinary repairs	899,852.82
Awards, etc.	969,875.57
	$2,661,287.07

If the inability of these canals to meet their ordinary expenses, or indeed to make any respectable contribution toward that purpose, shall compel their abandonment, this great expenditure will be a total waste of money, wrung from the people by taxation.

On the Erie canal the following are two specimens:

Work up to February 1, 1875, on contract on section 1 of Erie canal, contracted at $74,183.40	$458,114.72

Work in Black Rock and Buffalo harbors, expended.....	$717,333.00	
Engineering expenses, estimated..................	71,733.00	
Additional appropriation unexpended...............	170,000.00	
		$959,066.00
		$1,417,180.71
Total.............................		$4,078,467.79

This constitutes four millions of the eleven millions expended and the twelve millions appropriated for canal improvements within the last five years.

In the meantime, the whole expenditure — at rates far too costly — on the Erie canal, for doubling locks, was...........	$718,984.23
For taking out the wall benches..........	1,013,870.25
	$1,732,854.48

It is impossible, in the limited time which the exigency allows, to thoroughly investigate the vast mass of various outlays which have cost the people eleven millions of dollars. But the necessity of determining at once the tolls and appropriations, a sense of how small a share of this burdensome taxation has attained any real utility, and how much of it has been wasted in unnecessary work, or in the extravagant execution of improvements in themselves useful, and a clear perception of the main sources of the evils of administration, and of reforms attainable by legislation without a change of the constitution, make it my duty now to recommend specific and affirmative measures of redress.

CAUSES.

It is not merely in the general laxity and demoralization of official and political life, that we are to look for the causes of these evils. The interest which fattens on abuses of public expenditure is intelligent, energetic and persistent. Acting as a unit, it takes part through its members in the organization and the doings of both political parties; seeks to control nominations; rewards friends and punishes enemies; and it begins to operate by every form of seductive and coercive influence upon public officers, as soon as they are elected. The vast mass of the taxpayers are occupied in daily industries, on their farms and in their work-shops, and cannot easily, and do not, in fact, make a business of politics. In a silent contest with the tax-consumers, they are often practically unrepresented. It is only when they are aroused and organized, and can find representatives whom they trust, that they protect themselves and overwhelm all resistance. Useless works in the specious garb of improvements are undertaken, because of the indifference of the public officers — the inertness of the taxpayers — the indefatigable efforts of an influence seeking a benefit for its locality, which costs it an insignificant share of the burden imposed on the people; or the eager activity of the class who seek profit in contracts for construction, without reference to the utility of the work. Vertical walls are made to provide wharves for private individuals, and bridges where no public interest requires them. Fictitious improvements are contrived to supply profitable jobs. Work of real utility is made to cost greatly more than its actual value.

In making these observations, I do not leave out of view those honest citizens who while employed upon the public works have sought and obtained only a fair and just return for their labor, skill and capital. But in framing laws we must guard against the influence of self-interest upon the minds of honest men.

APPROPRIATIONS FOR ORDINARY EXPENSES AND REPAIRS.

I renew the recommendation in respect to the canals which the recent amendments of the constitution empowered the legislature to 'sell, lease, or otherwise dispose of,' that while the manner of their disposition remains undetermined, 'no expenditures should be made on those works not strictly necessary in view of their probable future.'[1] In order to carry out this policy, the appropriations for ordinary expenses and repairs upon them should be specified, separated from the provisions for the canals which the constitution requires to be retained; and should be reduced to the lowest practicable amount.

In respect to ordinary expenses and repairs to the canals which are to be retained as the property of the state, I recur to the suggestion which I had the honor to submit in the annual message:

'Ordinary repairs should be scrutinized with a view to retrenching their costs, and to obtaining the largest possible results from the outlay.'

In the present state of the prices of materials and the wages of labor, if the public officers can be inspired with a resolute purpose to make every expenditure for these objects effective, there ought to be no difficulty in reducing the appropriations from one-quarter to one-third below the amount provided for last year.

The present standard of repair and efficiency must be fully maintained.

Everything of good administration consists in the selection of the most necessary and useful objects of expenditure, and in securing the greatest effectiveness in the application of labor and the most advantageous purchase of materials.

If a determination to accomplish this result, and a sense of accountability can be diffused throughout the agents employed in the public service, this object will be easily and certainly attained.

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[1] Const. 1846, art. 7, § 6, am. 1874.

Appropriations for Extraordinary Repairs.

The wisdom of abstaining from all new work, except that which is not only useful but absolutely necessary, is obvious. Every item should be scrutinized with jealous care.

The aggregate ought to be kept within half a million; and as much below that maximum as possible. A thorough retrenchment in ordinary and extraordinary repairs will enable the state to remit for the present year, as compared with the last, to the boatmen and transporters, from five to six hundred thousand dollars of tolls, and, at the same time, to give relief to our over-burdened taxpayers, in a reduction of taxes, to the extent of more than a million and three-quarters of dollars.

If the restoring the Erie canal to its proper dimensions and the deepening of its water-way, which is by far the most useful improvement contemplated, can be deferred till next year, after its present condition shall be accurately ascertained, and then be proceeded with gradually, there is little else which cannot wait.

Justice to the people and to the canals demand that all extraordinary repairs, beyond what are clearly necessary to efficient navigation, should be suspended until a thorough investigation shall show that every improvement proposed is really necessary; and that the work is to be conducted under fair lettings and contracts, and is to be faithfully executed.

Erie Canal.

At the opening of navigation the present season, the double locks will be completed. The capacity of the Erie canal to do an aggregate business will be several times the requirements of the largest tonnage it has ever had.

The removal of the wall-benches will be so nearly completed, that the advantages of that change will be practically secured.

On September 30, 1874, there remained of wall-benches 24 48-100 miles on the towing path side, of which 12 25-100 miles are contracted to be removed; and 46 91-100 on the berme side, of which 7 50-100 are contracted to be removed; leaving 12 23-100 miles on the towing path side, and 39 41-100 miles on the berme side, where the obstruction is much less important; or equivalent in all to 26 miles on both sides. That is less than seven per cent of the whole length of the canal.

The engineer's estimate of the cost of removing the remaining wall-benches was, in January, 1874, $711,140; and an appropriation of $360,000 was made by the Legislature of 1874, which will be available for expenditure during the present year.

As the only effect of the wall-benches now remaining is that they contract the canal at its bottom from 56 feet to 42 feet, and, in that proportion, the lower part of the prism, forming a section four feet above the bottom of the water-way — thus lessening the body of water in which the boat moves for a fourteenth part of the length of the channel, and but one-fifth of that on the towing path side — the inconvenience of their existence, to this limited extent, is not very great or emergent.

In my judgment, a far more important improvement of the Erie canal would be effected by a thorough system of ordinary repairs, which should give the water-way its proper and lawful dimensions; and by progressively deepening it, wherever reasonably practicable, from seven to eight feet. As the object would be merely to enable the submerged section of the boat to move in a larger area of water, so that the displaced fluid could pass the boat in a larger space, it would not be necessary to alter the culverts or other structures, or to carry the walls of the canal below the present bottom; and the benefit would be realized in each portion of the canal improved, without reference to any other part of the channel which should remain unchanged. In facilitating the movement of the boat, and quickening its speed, it would increase the amount of service rendered in a given time, and would thereby diminish every element of the cost of transportation. It would benefit the boatmen and carriers more, even, than one cent a bushel remission of tolls. It would be of more real utility to navigation than five or ten times its cost expended in the average manner of so-called improvements on the public works. But it is too simple, too practically useful, to enlist the imagination of projectors who seek the fame of magnificent constructions and of engineers who build monuments for exhibition to their rivals, or to awaken the rapacity of cormorants who fatten on jobs.

I renew the recommendation of my annual message upon this subject; and particularly 'that provision be made by law to enable the state engineer, soon after navigation is opened, to measure the depth of water in the canal by cross-sections as often as every four rods of its length, and on the upper and lower mitre-sill of each lock.'

CANAL LETTINGS.

The constitution of the state provides that '*All contracts for work or materials on any canal shall be made with the person who shall offer to do or provide the same at the lowest price, with adequate security for their performance.*'[m] This requirement was intended to protect the state from extravagant contracts; but, by artful bids, and, in some cases, by fraudulent combinations, it is made an instrument to defeat the very end had in view by its authors. I have examined more than 100 contracts, and I find that most are so contrived that not only does the state in the end pay from two to four times the amount of the contract, but that the work is not given to the lowest bidder in fact, although it may be in form. This result is brought about by the following contrivance.

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[m] Const. 1846, art. 7, § 3, am. 1854, 1874.

When a contract is to be let, the engineer makes out an estimate of the quantity and kinds of work to be done. Those who make bids state at what prices they will do each kind of work, or furnish each kind of material. These prices are footed up, and the bid which amounts to the smallest sum is accepted. The sums thus agreed upon average but little more than one-half the amounts estimated by the engineer, and apparently the state makes advantageous contracts. On examination, it will be found that the prices for the several items bear no relation to their real value. In some instances excavation of earth is put at one cent per cubic yard, and in others 85 cents are asked. Excavation of rock blasted at one cent in some cases, and $2 in others. Slope-wall is bid for in some cases at 20 cents, and in others at $2. Hemlock timber, which is worth at least $12 per thousand, is in some contracts put at less than $3 per thousand, and in others at $30 per thousand. Oak timber in one instance is put at $1 per thousand, and in others at $70. Some items are absurdly low, others unreasonably high.

In some instances, a contractor will put in proposals on the same day for different jobs, but the prices for the same kind of work or materials will vary in his several proposals several hundred per cent.

It is clear upon the face of such proposals that some fraud is designed, but the commissioners have been in the habit of accepting them. I am happy to say that Commissioner Thayer at a recent letting rejected this class of proposals, which are known as 'unbalanced bids.' Heretofore they have been accepted, and not only has the state paid unreasonable prices, but more than one-half of the work on large contracts has been done and paid for without being advertised or offered to the lowest bidders.

The contractor gains these results by the following strategy:

When the engineer's estimate of quantities and kinds of materials are published by the commissioners, the contractor will find out by collusion, or in some other way, what quantities of each kind of work or material will, in fact, be required, or he will see what influence he can exert to change the contract after it is made. If it is changed, no new letting is had, but he claims the job as his right.

He then puts in his bid, offering to do such work or to furnish such material as he finds will not be required at all, or in small quantities, at absurdly low prices, at a quarter or in some instances at a twentieth part of its cost. The items which will be required in full, and probably in extra quantities, he will put at unreasonably high rates, and it turns out that what the contractor offers at low prices, is called for in small quantities, if at all, while those which are put at high prices are not only required in full, but in most cases in extraordinary quantities.

An example will more clearly illustrate how the state is defrauded by these devices.

The engineer having estimated certain work and materials as follows:

100	cubic yards of vertical wall at $3......	$300.00
3,855	" slope-wall at $1.50.......	5,782.50
2,400	feet B. M. white oak, at $50...........	120.00
60,000	" hemlock, at $15............	900.00
	Total estimate	$7,102.50

A's bid for the job at these rates amounted to $7,102.50. B's bid for the same was, for

100	cubic yards vertical wall, at $6	$600.00
3,855	“ slope-wall, at 30 cents	1,156.50
2,400	feet B. M. white oak, at $70	168.00
60,000	“ hemlock, at $3	180.00
	And aggregated	$2,104.50

The proposal of B, apparently so advantageous to the state, was accepted, and the contract awarded to him as the 'lowest bidder.' But afterward, by some influence, it was decided to make only vertical, and no slope wall, and to use only oak and no hemlock timber. There was no reletting, although the agreement had been, in fact, revamped into a new and different contract, which enabled B to collect from the state for

3,955	cubic yards of vertical wall, at $6	$23,730.00
64,400	feet B. M. white oak, at $70	4,368.00
	The sum of	$28,098.00

It will be seen that in such transactions — and they are numerous — in violation of the constitution, the contractor gets the work without there having been in fact any public letting, or any chance for competition by others.

For the purpose of showing actual results of this system, I state the following ten cases, which give the amount the state has paid on certain contracts in comparison with the sum for which the contractor agreed to do the work at the lettings made by the commissioners.

	Amount of contract upon exhibited quantities at contract prices.	Amount actually paid by the State up to Feb. 1, 1875.
Contract No. 1	$74,183 40	$458,114 72
Contract No. 2	29,431 00	56,845 68
Contract No. 3	37,871 00	110,320 13
Contract No. 4	10,617 00	49,936 30
Contract No. 5	14,397 00	78,967 20
Contract No. 6	85,562 50	220,614 58
Contract No. 7	31,286 00	130,317 45
Contract No. 8	86,584 00	222,610 68
Contract No. 9	9,504 00	41,127 55
Contract No. 10	45,300 00	191,915 55
Total	$424,735 90	$1,560,769 84

These show that the state has already paid nearly four times the amount which was involved by the terms of the contracts, and though this excess amounts to more than a million of dollars, some of the expenditures are still going on with no prospect of completion. It also appears that of the expenditures of $1,560,769.84, only $424,735.90, less than one-third, was submitted to a public letting.

By manœuvres of this character the costs of public works are run up to extravagant sums. Appropriations are absorbed, deficiencies are created to be paid by new appropriations, and the people are loaded down by taxes.

REMEDIAL MEASURES.

Desiring to co-operate with you in a reform of existing abuses, and of the systems which have conduced to them, I submit to your consideration such suggestions for new legislation as seem to me adapted to meet the wishes and protect the interests of our common constituents.

ENGINEERS' ESTIMATES.

Methods ought to be devised to make the estimates of the kinds and quantities of work, exhibited on the quantity sheet for lettings of contracts, to conform to the actual work to be done. On a change of the plan or specifications of the contract, the work under the old contract should be closed, and a new letting should take place.

BIDDINGS.

The law authorizes the canal board to make regulations as to the biddings, and one of those regulations provided for discarding bids which show bad faith upon their face.

As the officers who let the contracts have not enforced this regulation, except in a recent case, a law should be passed defining their rights and duties in this respect.

I recommend that hereafter the bids be opened, and the awards of contracts be made by the canal board. It is a larger body, and contains the officer who is charged with the fiscal administration of the state, and also the state engineer. It was formerly vested with these duties, and the change was only made to serve a temporary party object.

OFFICIAL ACCOUNTABILITY.

In the organization of governmental powers two conditions seem essential to the well-working of the machinery of administration.

First. While undue concentration of powers should be avoided, and checks and balances, in the requirement of the concurrent action of several persons, are preserved, a certain unity of function and of organization is necessary to enable the people to enforce any real responsibility.

An issue in regard to the conduct of public officers, or in regard to a policy of administration, should be submitted to the people with the simplicity of an issue to a jury at common law. The million of voters in the state cannot resolve themselves into a committee of investigation to hunt out, by long and tedious search, the particular wrong-doer. They cannot convert themselves into a court to go through a complicated and protracted trial. Amid the numerous and changing objects of interest which attract their attention they cannot devote themselves to a single specific measure of ordinary importance for three successive years. All schemes of administration which involve such impracticable demands for the co-operation of such vast numbers of individuals, discard the idea of representation in government. They compel the whole voting mass to conduct the complex affairs of human society in person. They are snares invented to destroy the power of the people in their own government, to neutralize the elective principle, and to create official irresponsibility.

The members of the canal board, other than the canal commissioners and the lieutenant-governor, are all chosen at one election. The elective power of the people is effectual to make a change of persons or policy. But the canal commissioners are elected one each year, and it takes three years to make a complete change. They have practically ceased to act as a board. Each one carries on his administration over his division of the canals as if he were a totally independent authority. They make three separate reports. Each one prepares a separate annual estimate for future expenditures. They formerly sat as members of a board of canal commissioners, who consulted, decided and acted as one integral body. Their most important functions were performed as members of the canal board, or in concert with the canal board, which embraced the great officers of the state, including its fiscal representative, who is under an ever active pressure to make both ends meet in the financial affairs of the state. They were practically subordinate to the fiscal members of the administration.

Secondly. It is fundamental that the spending officers must be subject to the influence and control of the officers whose duty is to provide the ways and means. No great corporate business, no private affairs could be conducted successfully on any other plan. The experience of the state, under a system which the officers who initiate expenditure and control the application of the public money, and the execution of public work, have been independent and practically irresponsible, has been fruitful of irregularities, extravagance, waste and corruption. There have been several futile impeachments, but no real remedy.

It does not seem expedient to wait for a change which involves an amendment of the constitution, and will, therefore, take several years. There are measures within the competency of the legislature which can be put into immediate operation, and which will have great efficiency to remedy the evils.

Among these, the suggestion has occurred to me, that an inspector of public works can be created by law, who shall be invested with full powers of investigation, and shall report to the governor and legislature; and who shall derive his appointment from a source completely independent of the canal officers.

Another expedient worthy of your consideration is to enforce the accountability of the officers charged with the disbursement of the public money, by a liability to summary removal or suspension.

The Constitution (Art. X, sec. 7) commands:

'Provision shall be made by law for the removal for misconduct, or malversation in office, of all officers (except judicial) whose powers and duties are not local or legislative and who shall be elected at general elections, and also for supplying vacancies created by such removal.'

At the close of the session of the convention of 1846, on the day before its final adjournment, it was discovered that, except in the case of the treasurer, no provision had been made for the removal of state officers having charge of public funds, who had been made elective by the people of the whole state. The convention, not undertaking at so late a period to devise a system, devolved that duty on the legislature. This power has remained twenty-nine years unexecuted.

It is a duty of the legislature which ought no longer to remain unperformed. Applied to the canal commissioners, who are agents not only in the application, but in the custody and disbursement of the public moneys, and to the state engineer, who, with his subordinates, exercises great power over the expenditure by his estimate of the cost and certificates of the performance of work, it would be an improvement upon our administrative system, in accord with the intention of the constitution, with sound principles of government, and with the indications of experience.

Provision ought also to be made by law for regulating the formation of the annual estimate for future expenditures. It ought not only to be the result of consultation between the canal commissioners, but should have the written approval of the state engineer as to the necessity and cost of the work; and of the comptroller as to its propriety, considered in connection with the financial administration.

It would doubtless be a valuable improvement to create a paymaster, appointed by the commissioners of the canal fund, who should be accountable to the auditor, and should make all payments on the certificates of the canal commissioners and state engineer. With these provisions the control of the state engineer over his subordinates might properly be enlarged.

OTHER MATTERS TO BE LOOKED INTO.

I have deemed it my duty to look beyond the abuses practiced in the letting of contracts, and to see if the materials have been delivered, and the work has been done, for which so many millions have been paid out by the state, and also to learn if the locks, walls and other structures have been built in a faithful way, and in compliance with the contracts. I am satisfied, from information I have already gained, that there should be an investigation of these subjects. It is my purpose, with the aid of the members of the canal board, to have an examination made of our public works, and to learn their condition. It may be too late to detect all frauds, but many may be exposed, and punished, and a check put upon practices so destructive to morals, as well as to the public interests of the people of the state.

CONCLUSION.

It is clear that, under the present system of canal management, the people will not be relieved from taxation, the boatmen from high tolls, or the needed improvements of the Erie and Champlain canals be finished. It is in our power to gain those great objects by a wise and an honest policy of retrenchment, reform and official responsibility. Unfortunately the abuses now practiced against our canals and their commerce are exciting strong prejudices against the great public works rather than against the wrong-doers and the wrong-doing which tend to destroy them.

Our duty is clear. Let us cut off the expenses which divert revenues from general improvement of the canals to local or individual purposes, make every official, every employee, every contractor feel that the laws you have just passed against fraud will be enforced, and our canals will be finished, their commerce revived, and taxation will be lessened not only as it oppresses the boatmen, but also all other classes of our citizens.

There is no real antagonism between the boatmen and forwarders who seek a fair compensation for their services, the public who desire cheap transportation, and the people who justly claim some relief from the present intolerable pressure of taxation. Their interests are joint. Whenever these classes are brought into a false position of apparent hostility, it is sure proof either of a bad state of laws, or of an unfaithful performance of official duties. Whoever, for illicit gain, despoils or wastes the resources applicable to these objects, is the common enemy of the boatmen and the taxpayers, who must unite to enforce measures of reform and redress.[16]

SAMUEL J. TILDEN."

For exhibits referred to in the message, see Senate Document No. 64, and Assembly Document No. 102.

April 2. To the Assembly: Transmitting the following memorial from the New York Historical Society, praying that it may be charged with the preparation of a memorial volume, exhibiting the progress of the State during the past century, for the purposes of the Centennial Exhibition at Philadelphia:

"TO THE HONORABLE THE SENATE AND HOUSE OF ASSEMBLY OF THE STATE OF NEW YORK:

May it please your honorable bodies,—

The New York Historical Society, 'An association founded in the year 1804, and incorporated under the Laws of the state by act of February 10, 1809, for the purpose of discovering, procuring, and preserving whatever may relate to the natural, civil, literary, and ecclesiastical history of the United States in general, and of this State in particular,' respectfully submit to your judgment the following considerations.

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[16] On the 31st of March, the Senate concurred in an Assembly resolution adopted on the 26th, providing for a joint legislative committee of three members from each house, who were required to investigate canal frauds, and report in full within thirty days. A resolution adopted early in May extended the committee's time, authorized it to continue its investigations during the recess of the Legislature, and required it to report at the next session.

By another resolution adopted on the same days as the resolution appointing the legislative committee, an investigating commission was created, to be appointed by the Governor and Senate, to be composed of four members, who were also required to investigate alleged frauds and to report at the opening of the next session of the Legislature.

Chapter 91, passed April 2, authorized the commission to issue subpœnas and procure the attendance of witnesses and documentary evidence. The same act fixed the compensation of commissioners at $20 a day, and authorized the employment of experts and agents to aid in the investigation. [See 1876, note 2, *post*, p. 928.] Chapter 91 was sustained in People v. Learned (1875), 5 Hun, 626.

It is now definitely settled that there will be held in the city of Philadelphia a grand Centennial Anniversary of the Declaration of American Independence. To what degree this may or may not become an international exhibition is not within the purview of this representation, but it is now beyond question that this memorable anniversary will be the occasion of an exhibition of the progress of the United States in every branch of natural and social science. There will be gathered together from the near and remote parts of the American domain the products of its rich and extensive soil, the examples of its mechanical and industrial progress.

But among the material evidences of a growth and prosperity to which the history of the world presents no parallel, there should be also found some demonstration of the advance which has been made in the social and intellectual walks in all that pertains to the welfare and improvement of the human race.

This general field may well be occupied by the United States government, but it is in the opinion of this society the grave duty of the state of New York, which stands preeminently foremost (*facile princeps*) among the commonwealths of this continent, to present a memorial of its own advance in each department of this field, to establish and set forth the precise condition in which she emerged from the colonial system and the progress she has made in the century, not only under the protecting mantle of the Union, but because of the special social and political forms which she has herself selected as the fittest modes of her own peculiar development.

A memorial volume, setting forth in detail the original foundation (the colony as it stood on the 4th of July, 1776), and the grand edifice (the state as it will stand in 1876), would be the noblest and most instructive contribution which could be made to this celebration. Within itself it would include the march of the state in every walk of improvement. In its constitutions, which, altered from period to period, have been gradually securing in higher perfection the liberty, social and political, of the individual, while not unmindful of the interests of the body politic. In its legislation, which, breaking away from the uncertain grasp of the common law, has added to itself the better provisions of the civil code, until its statute law is a recognized model of modern jurisprudence, in the merciful and humane application of its penal code, in its large and comprehensive charities wisely applied to every form of human suffering, by which the blind see without vision, the deaf hear without hearing, and the dumb speak without utterance, each through the exercise of some kindred sense, and finally in its simple, gratuitous and well-ordered system of universal education.

First among the states, it has recognized the grand underlying fact of our American system, universal suffrage, the government of the people, by its directly chosen instruments, and, as a natural result, the obligation of capital to educate labor, of the rich, who profit by the successful operation of its laws, to instruct and improve the poorer classes, of the strong to aid the weak, of the state to elevate each and every one of its members to its own high standard. It will not be claimed that it has either reached or approached perfection; no human system is or can be perfect; the strain upon that of this state, arising from the constant flow through its gates of a stream of people, who, if not wholly uneducated, are at least unaccustomed to self-government, is constant and severe; but it is claimed that it is only because of the wise legislation of the state that this strain can be endured at all.

In the judgment of this society upon the conclusion of such a memorial well digested, well detailed, this state will be found to stand in the very front of modern civilization as a humanitarian commonwealth in advance of any body politic in either hemisphere; as a state which, in proportion to its wealth and population considered separately or together, has contributed more largely to the advancement of its own people than any political organization, ancient or modern.

Your memorialists are aware that this is a broad and bold statement, but they themselves are confident that the results will prove the correctness of the declaration. In its active and busy life the state has had little time to turn aside from the labor of the hour to mark its progress on the mile stones of time, but now that a suitable occasion offers, it should not be neglected by those who are charged with its interests and honor.

Nor should the record of the material progress of the state be neglected; its increase in wealth, the growth of its cities, the spread of its population, the improvements in its agriculture, the development of its resources, the opening of its canals, and the multiplication of its lines of travel by water and by rail.

May it please your honorable bodies:

The Historical Society of the State of New York humbly and earnestly prays that it may be charged with the preparation of this noble monument to the breadth and power of our institutions and the honor of the empire state. It humbly prays that your honorable bodies will remember that since the beginning of the century nearly, it has devoted itself to the preservation of the material necessary to such a memorial. And that on its petition the legislature has, at various times, made provision for the publication of its more valuable records.

Your honorable bodies will observe that such a memorial will not only be a source of honorable pride, but of a direct pecuniary value which it is difficult to estimate. Such a showing as it will make of the natural resources of the state, will tend to increase the growth of its population by attracting to it the better class of emigration, and to raise and strengthen its credit by bringing into clear and public view the firm basis upon which it rests.

And in the confident hope that this, their earnest prayer, will receive the wise and favorable consideration of your honorable bodies,

Your memorialists will ever pray.

[L. S.] FREDERIC DE PEYSTER, President.

ANDREW WARNER, Recording Secretary.

New York, February 20, 1875.

April 12. To the Senate:

Veto of a bill entitled "An act to change the name of the Black River Insurance Company of Watertown, New York."

" It may, perhaps, be questionable whether a corporation is a person known within the meaning of the first subdivision of section 18 of the Constitution; but it seems to me plain that the object sought to be accomplished can as well be attained either by an amendment to chapter 322 of the Laws of 1870, authorizing corporations to change their names, or by a general act specially applicable to insurance companies."

The bill was not passed over the veto.

April 12. To the Senate:

Veto of a bill entitled "An act for constructing and regulating a ferry across the Hudson River in the town of Phillipstown in the county of Putnam."

" This bill authorizes the Garrison and West Point Ferry Company to maintain a ferry between Garrison Station and the West Point dock, and prohibits all other persons from conveying passengers or goods for hire across the river between any point on either side within half a mile of a line drawn from the ferry slip at Garrison to the West Point dock, under a penalty of five dollars for each offense.

It seems to me plain that this bill is in conflict with the provisions of section 18 of article 3 of the Constitution, which prohibits the Legislature from passing any private or local bill, 'granting to any private corporation, association or individual, any exclusive privilege, immunity or franchise.' "

The bill was not passed over the veto.

April 16. To the Senate:

Veto of a bill entitled "An act to amend an act entitled 'An act to authorize the consolidation of certain railroad companies,' passed May 20, 1869."[17]

" Section 1 of the act sought to be amended authorizes any railroad corporation incorporated under the laws of this or any other State operating a railroad or bridge, wholly or partly within this State, to consolidate with any other railroad company organized under the laws of this or any other State, where the two railroads will form a continuous line.

The bill now before me proposes to amend that section so as to authorize any railroad corporation organized under the laws of this State or of the State of Pennsylvania, either operating or constructing a railroad or bridge wholly or partly within the State, to consolidate with another company formed under the laws of this State or of the State of Pennsylvania.

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[17] This bill relative to the consolidation of domestic and foreign railroad corporations was not passed over the veto, but another bill on the same subject was passed, and became a law, chapter 256, on the 7th of May. The new act was limited to proposed consolidations between New York companies and Pennsylvania companies, and did not affect the act of 1869 referred to in the veto message.

This amendment is doubtless proposed to meet a special case so as to allow the consolidation of two corporations, although the roads of neither are in operation; but it restricts the operation of the existing statute so as to prevent the consolidation of two railroad corporations, although the roads of both are in operation, unless each of such corporations was organized under the laws of this State or of the State of Pennsylvania. I am unable to see any good reason for such a discrimination between railroad corporations of the State of Pennsylvania and those of other contiguous States.''

The bill was not passed over the veto.

April 21. To the Assembly:

Veto of a bill entitled "An act to authorize the increase of the capital stock of the Richmond County Storage and Business Company."

'' The company named in the title of this bill was incorporated by chapter 684 of the Laws of 1870, with a capital of one hundred thousand dollars, with power to increase the same to five hundred thousand dollars.

I am informed that this corporation has never done any business under its charter, or exercised any of the powers thereby conferred upon it, except that it has perfected its organization.

The primary object of this company is ' to receive on storage or deposit any goods, wares, merchandise or property for safe keeping or shipment, and to make advances thereon or on the pledge thereof, and to transact all kinds of business usually done by warehousemen and lightermen, and to collect dockage, wharfage, storage and lighterage for the use of their property, and the machinery connected therewith, or the lighters employed by them;' but it is also authorized by its charter to ' guaranty the payment of promissory notes, bills of exchange, bonds, accounts, claims, annuities, mortgages, choses in action, and evidences of debt, and the punctual performances of all contracts and obligations upon such terms as are allowed by law;' and also to ' receive and take the management, charge or custody of real or personal property and choses in action;' and to ' advance moneys, securities or credits thereon, on such terms as are allowed by law,' whether such securities, contracts or property have any connection or relation to the business of storage, dockage or lighterage, or not.

The bill now before me authorizes the increase of the capital stock of the company to the extent of one million of dollars.

I cannot sanction any increase of the capital stock of a corporation whose powers are so diverse and extensive.

On the other hand, I recommend the modification or repeal of its charter."

The bill was not passed over the veto.

May 3. To the Assembly:

Veto of a bill entitled "An act to amend section 10 of chapter 830 of the Laws of 1873, entitled 'An act to legalize the adoption of minor children by adult persons.'"

" The act of 1873, which this bill proposes to amend, defines the adoption for which it provides as a ' legal act whereby an adult person takes a minor into the relation of a child, and thereby acquires the rights and incurs the responsibilities of a parent in respect to such minor.' It prescribes the method whereby the adoption is to be accomplished; concerning which it is only necessary to say here that, if the child is upward of twelve years of age, his consent is required; that the consent of parents is also required; but if both parents are dead, or the survivor has been guilty of certain acts of misconduct specified in the act, or is incompetent to consent, it is sufficient to procure the consent of ' an adult person having the lawful custody of the child;' that the persons required to consent are to appear before the county judge, who, if he is satisfied that 'the moral and temporal interests of the child will be promoted by the adoption,' must make an order 'directing that the child shall be regarded and treated in all respects as the child of the person adopting.' Then follows the tenth section, declaring that the child and the person adopting 'shall sustain to each other the legal relation of parent and child, and have all the rights and be subject to all the duties of that relation, excepting the right of inheritance, except that as respects the passing and limitation over of real and personal property, under and by deeds, conveyances, wills, devises and trusts, said child adopted shall not be deemed to sustain the legal relation of child to the person so adopting.'

The bill now returned proposes to strike out all of the tenth section after the word 'relation,' so that the adoption will thenceforth have precisely the same legal effect as if the child and the person adopting were parent and child by blood.

The exceptions created by the provisions proposed to be stricken out are of two different descriptions. The first prevents the application to the relation by adoption of the rules of law regulating the descent of real property and the distribution of personal property. If the only effect of striking out this exception would be to enable the adopted child to inherit or take, as next of kin, from the parent adopting in like manner as a child by blood, the change might be unobjectionable. It would generally be only carrying out the presumed intent of the person adopting in entering into the relation. Whether the child would be entitled to inherit from the collateral relatives of the parent adopting, is a very grave and a doubtful question, which ought to be settled by the statute. But it is certain that the rules of descent and of distribution, as between the parent adopting and the child, would work both ways; that the parent would inherit from the child as well as the child from the parent. It appears to me manifestly unjust and inexpedient to provide that the adopting adult shall inherit and take as heir and next of kin from the adopted minor. If the law should be thus changed, an unprincipled or even a selfish man or woman, notwithstanding the guards thrown around the child by the statute, might easily, in many cases which may be suggested, cause all the forms of the statute to be complied with in such a manner as to adopt as his own child a rich orphan minor for the purpose of inheriting from him. If the child is under twelve years of age, the adopting parent may be substituted as his heir and next of kin, if this bill becomes a law, without his consent; and even supposing that the consent of a child of upward of twelve years ought to carry any moral or legal weight in a question of property, it would be irrevocable till he attains majority; and then only by means of the positive act of making a will. On the other hand, on the next day after the adoption the adopting parent may, by a will, cut off the child from any share in his property. But apart from this consideration the proposed bill would thus operate unjustly; it would, in case of the death of a child before attaining the age when he can make a will, or after that age, if he dies intestate, cut off his natural heirs and next of kin, who might be his own infant brothers and sisters by blood. The Legislature ought not to enable a child who has not legal capacity to make a will, to change the course of succession to its real and personal property, by means of a legal proceeding taken by him in connection with interested strangers. Still less ought the State to allow such a change to be effected by the act of strangers alone.

The second exception which this bill proposes to strike out prevents the fictitious relation of parent and child created by the adoption from affecting the passing and limitation over of real or personal property. This qualification was also inserted for the protection of third persons;

its effect is to prevent the intent of a testator or grantor of property from being defeated in consequence of the adoption, by the diversion of the property from the direction which he intended. The clause operates in both ways; it prevents a diversion of property limited over after the death either of the adopting parent or of the adopted child; and in either aspect it is eminently just and proper, and should be retained. From the nature of the case, the person who creates an intermediate estate with a limitation over, does not intend that the holder of the intermediate estate shall absolutely dispose of it. He generally means that it shall go to his own blood, and his intention is defeated if a stranger is interposed. For instance, a testator leaves an estate to his son for life, with remainder to the children of his son, or, in default of such heirs, to another son and the latter's children. The first taker having no children, adopts a child under this act, perhaps in consequence of a family quarrel, and for the express purpose of disappointing his brother's children. Can there be any doubt that the testator's intent is defeated? The consequences which would ensue, if the child adopted was the holder of the lesser estate, are of the same general character. Again, the abrogation of the exception now under consideration may work an injury to the adopted child by depriving him of an estate limited to him as the child or an heir of his parent by blood. It would, at all events, raise a difficult question for decision by the courts.

The bill is unnecessary for any purpose, except to protect the adopted child of a person neglecting to make a will.

Though there might be a certain small convenience in providing by law against such an oversight or neglect in such a possible case, the motive is totally inadequate to call for or justify a fundamental change in the laws which define the relations of kindred and their rights in respect to property.

The rules of our customary jurisprudence which regulate these relations, and the rights of property incident to them, are the gradual growth of many centuries, and have become a refined and complicated system, adapted by the best intellects to the wants of our society in the infinite diversity of conditions which experience has developed. Such a change as is proposed by this bill would be likely to produce many consequences not foreseen by its projectors, and should not be adopted without a consideration and discussion to which it has not been submitted. The people have become acquainted with the laws which have existed from time immemorial, and are accustomed to act with reference to them. A deviation to meet a special and peculiar instance may be worked out by affirmative acts. It would be unwise, in order to accommodate such a case, to enact a revolution of legal rules which would require a series of affirmative acts to produce the results which the people are accustomed to regard a matter of course."

The bill was not passed over the veto.

May 3. To the Assembly:

Veto of a bill entitled "An act to enable married women to release and confirm releases of dower and inchoate rights of dower in certain cases."

" The second section of this bill confirms every release of an inchoate right of dower heretofore made by a married woman during coverture to a person in possession of real property under title derived from the husband, although the husband has not joined in such release; and the bill contains no clause saving existing rights, even where an action is actually pending.

It is well settled that such a release is absolutely void in the present state of the law in this State.

This bill, therefore, is intended to validate conveyances, which are now invalid, and to make effectual releases which are now ineffectual.

It is, therefore, certainly improper, and probably unconstitutional."

The bill was not passed over the veto.

May 3. To the Assembly:

Veto of a bill entitled "An act to provide for the recording of certain decrees in partition suits now remaining on file in the office of the clerk of Onondaga County, and for the alphabetical indexing of certain records of deeds and mortgages in the office of said clerk."

"The first section directs that all decrees making partition of real estate now on file in the clerk's office of Onondaga county shall be recorded. The provision is a very proper one, but it ought obviously to be extended so as to cover as well decrees of partition which may hereafter be filed as those already filed. The provision, moreover, ought to be general, applying alike to all the counties of the State.

The second section directs a general alphabetical index to be made of the grantors and grantees in all instruments now recorded in said office affecting real estate. Of the necessity for this work the local authorities are the best judges, and the expense is a charge upon the county. Assuming that the board of supervisors have not already, under section 7 of chapter 855 of the Laws of 1869, full authority in the premises, any law now made on the subject ought to leave it to their discretion to order the work.

The Legislature now have under consideration a general bill conferring further powers on the boards of supervisors. It would be better in that bill to give all the authority necessary in such instances as this, so that matters so obviously of local interest and of local expenditure as this is may not be pressed upon the attention of the Legislature, taking up time which should be given to the general business of the State.[18]

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[18] The bill referred to in the veto message, conferring additional powers on boards of supervisors, was passed and became chapter 482 on the 5th of

I feel confident that on consideration the Legislature will agree with me in these views."

The bill was not passed over the veto.

May 3. To the Assembly:

Veto of a bill entitled "An act supplementary to an act, chapter 200 of the Laws of 1874, entitled 'An act to authorize the appraisal and sale of leased fine salt lots on the Onondaga Salt Springs Reservation by the Commissioners of the Land Office,' and authorizing the Commissioners of the Land Office to exchange lands on said reservation."

"The constitutional provision regulating the lands owned by the State contiguous to the salt springs is as follows:

'The Legislature shall never sell or dispose of the salt springs belonging to this State. The lands contiguous thereto and which may be necessary and convenient for the use of the salt springs, may be sold by authority of law and under the direction of the Commissioners of the Land Office, for the purpose of investing the moneys arising therefrom in other lands alike convenient, but by such sale and purchase the aggregate quantity of these lands shall not be diminished.'[n]

The first section of this bill reads thus: 'If any lands heretofore acquired by the State on the Onondaga Salt Springs Reservation, as lots on which to manufacture fine salt, shall have been so acquired by gift or grant, without

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June. The county law (L. 1892, chapter 686) devolves upon boards of supervisors the care and custody of county books and records, subject to their use by county officers, and authorizes copies and transcripts for the purpose of preservation.

Chapter 482, amended 1880, chap. 365; 1881, chap. 554; 1885, chap. 451, was sustained in Phillips v. Schumacher (1877), 10 Hun, 405; Re Church (1883), 92 N. Y. 1; Hubbard v. Sadler (1887), 104 N. Y. 223; Kirkwood v. Newbury (1890), 122 N. Y. 571.

[n] Const. 1846, art. 7, § 7.

compensation to the original owner or owners thereof by the State, and if the Commissioners of the Land Office and the superintendent of the Onondaga salt springs shall at any time determine and officially certify that any of said lots are no longer necessary for the purpose of manufacturing fine or boiled salt thereon, the Commissioners of the Land Office shall not sell the same, but may in their discretion re-convey, without cost to the State, such lot or lots to the original owner or owners, their heirs or assigns, without cost or expense to the State, and discharged from all obligation expressed or implied on the part of the State to furnish said lot or lots with salt water from the public pumps.'

The words 'gift or grant without compensation,' will be construed to mean a conveyance for which no money has been paid by the State. The lands may, however, have been conveyed in consideration of advantages to the grantors other than the receipt of money. It may have been greatly for their interest to convey these lands to the State and to take back leases with 'the obligation on the part of the State to furnish said lot or lots with salt water from the public pumps.' It can hardly be believed that the lands were given to the State in pure generosity with a view simply to increase the public domain. Their former owners converted them from private lands into State lands in order to reap some benefit from this change of title; and this benefit they have no doubt enjoyed. There is probably no more reason why the State should give away these lands to their former owners than to any one else; nor any more reason why it should give them away at all than any other property it owns.

The Constitution provides that these lands may be sold, not given away; that they may be sold only for the purpose of investing the proceeds in other lands, and that the aggregate of these salt lands shall not be diminished. The bill provides that the lands shall not be sold, but may be given away; there will be no proceeds to be reinvested, and so the aggregate of lands will be diminished.

The Constitution speaks of ' the lands contiguous thereto, and which may be necessary and convenient for the use of the salt springs.' This bill, in providing for an official determination which is to precede and to be relied on to justify the proposed re-conveyance by the State, requires a certificate only to the effect that ' said lots are no longer necessary for the purpose of manufacturing fine or boiled salt thereon.' The lands may, notwithstanding, be necessary and convenient for coarse salt or for other purposes connected with the manufacture of salt.

A reference to section 44 of chapter 346 of the Laws of 1859, will show that if the State provide for vacating any leases before their expiration, as it must do if it re-conveys the lands and is discharged from all obligation to furnish the lots with salt water, claims are likely to arise against the State for the value of any salt manufactories erected by the lessees thereon. For protection against such claims the bill makes no provision.

The bill is open to the objection that, if its purposes are carried out, wrong is likely to be done to the rights and interests of the State. Moreover it conflicts, in my judgment, with the spirit and intent if not with the letter of section 7 of article 7 of the Constitution.''

The bill was not passed over the veto.

May 5. To the Assembly:

Veto of a bill entitled "An act to reorganize the village of Canajoharie."

'' The bill expressly constitutes the inhabitants of a particular territory a body politic and corporate, and is a complete village charter. Although there is at present a municipal corporation covering the same territory and bearing the same name, it seems to me doubtful whether this bill does not contravene the spirit if not the letter of the provision of the Constitution which forbids the passage of a local act incorporating a village.[o]

It differs in many important respects from the present charter, and contains some provisions which seem to me objectionable. I think these changes should not be made without the approval of the electors of the village, to whom, as I am informed, the bill has never been submitted.''

The bill was not passed over the veto.

May 10. To the Senate:

Veto of a bill entitled "An act to incorporate the Rescue Hook and Ladder Company, of Tonawanda, Erie County, New York."

'' If the members of this company wish to become incorporated they should avail themselves of the provisions of chapter 397 of the Laws of 1873, which provides fully for the incorporation of fire, hose, and hook and ladder companies.''

The bill was not passed over the veto.

May 11. To the Legislature:

'' EXECUTIVE CHAMBER,
ALBANY, *May* 11, 1875.

'' The Constitution (article 8, section 9) declares that: ' It shall be the duty of the Legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent abuses in assessments and in contracting debt by such municipal corporations.'

The Convention of 1846, having exhausted its sessions in the consideration of questions upon which it acted, and finding itself unable to deal adequately with the problem of municipal government, on the day before its adjournment, charged that duty upon the Legislature. Its primary object was to protect taxpayers in the municipalities against abuses on the part of local governing officials, in taxation for local administration, in assessments for local improvements, in the contraction of municipal debts, and in the loaning of municipal credit.

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[o] Const. 1846, art. 3, § 18, added 1874.

Those evils had already attracted attention, though they were at that time but in the beginning of the monstrous growth to which they have now attained. In the twenty-nine years which have elapsed, the increase of population in this State has been chiefly in the cities and incorporated villages, until, at the census of 1870, those organizations embraced more than two millions, and now about two millions and four hundred thousand of our people. The course of legislation, so far from obeying the injunction of the Constitution, has been mainly in the opposite direction.

Every annual statute book has been largely occupied with enactments favoring the growth of municipal expenditure, involving taxation, assessments, the contraction of debt, and the loaning of credit. The result, so far as the cities of the State are concerned, is shown by an abstract of reports from the twenty-four cities, which have been furnished to me by the local officials, and which I herewith transmit to your honorable body.

MUNICIPAL TAXATION.

The aggregate valuation of property in these cities, subject to taxation, in 1874, was $1,569,535,074.

The aggregate of city taxation was $36,439,121.

The aggregate county and State taxation was $13,990,487.

The aggregate of taxation was $50,429,609.

The aggregate debt of these cities was $175,657,267.

Computing the taxation and debt on the population of 1870, adding twenty per cent for subsequent growth, the city taxation was $15.57, the county and State taxation $5.98, and the aggregate was $21.55 for each inhabitant. The city debt was for each inhabitant $75.80.

It must be borne in mind that the proportion of the assessed valuation of real estate to its actual value is fixed in these reports according to a standard from which there is now a large reduction. The average of the assessment is 55.43 per cent. of the true value.

If the recent fall in marketable values be estimated at one-third, the rate of the assessed valuation would be eighty per cent. of the actual value.

It may be presumed that the values stated in these reports have reference to real property. No allowance is made for the undervaluation of personal property.

It is probable that, in many instances, the taxation imposed upon property in cities has been from one-quarter to one-third, and by the decline of rents is now one-third, and sometimes reaches one-half the income of real estate.

In 1853, when the population of the United States numbered twenty-five millions, the whole cost of its government was under $55,000,000. It will be seen that less than two millions and a half of inhabitants of the cities of New York pay nearly as much taxation as was imposed on twenty-five millions, about twenty years ago, for the cost of the army, navy, Indian treaties, and all other expenses of the general government.

As I remarked in my annual message: 'In the decade beginning July 1, 1865, the people will have paid in taxes, computed in currency, seven thousand millions of dollars. Three-fifths were for the use of the Federal Government, and two-fifths for the State and municipal governments. It is doubtless true that some portions of the municipal expenditures were for objects not strictly governmental. But it cannot be questioned that much too large a portion of the whole net earnings of industry, and of the whole net income of society, is taken for the purpose of carrying on government in this country. The burden could more easily be borne when values were high, and were ascending. As they recede toward their former level, the taxes consume a larger quantity of the products which have to be sold in order to pay them. They weigh with a constantly increasing severity upon all business and upon all classes. They shrivel up more and more the earnings of labor. This condition of things ought to admonish us, in our respective spheres, to be as abstinent as possible in appropriations for public expenditures. If the cost of government in our country were reduced, as it ought to be, one-third, it would still be larger than a few years ago, taking account of the prices of the products, which, in order to pay that cost, we are compelled to convert into money.'

CONSEQUENCES.

The burdens upon taxpayers in cities are exhibited in various ways: bills for relief by the temporary funding of floating debts; bills authorizing loans to carry on or complete permanent improvements; frequent appeals from taxpayers against the measures of local officials, so numerous that it is quite impossible to arbitrate intelligently between the contending parties, are among the incidents of the times.

The choice between the opposite evils which such cases present, is often difficult and the result unsatisfactory. Works by the localities, as by the State, which ought not to have been undertaken, or which are on a scale too expensive or extravagant, are advanced so near to completion that it is not expedient to refuse the means to finish them, or not proper to overrule the local officials without a more intelligent and assured personal judgment than is possible. It will not do to enforce the rule that loans for permanent improvements shall be accompanied by a sinking fund in many cases where there was no notice. But I have refused to sanction a bill diverting funds raised by permanent loan and not needed for its original purpose, to current expenses, and I have insisted that in funding floating debts. the loans should be but temporary, until the deficiency could be provided for by taxation.

It has been impracticable to at once inaugurate a better system. The whole subject requires a careful and thorough investigation, and the adoption of a fixed policy which shall be known to the people and to which they shall conform.

JUDICIAL REMEDIES.

It is but just to the present Legislature to say, that the three bills which it adopted with great unanimity, providing judicial remedies against frauds, affecting the public moneys or property, are of more value for the repression of the evils of municipal government than all the legislation which has taken place during the twenty-nine years in which the mandate of the Constitution, in respect to municipal administration, has remained unexecuted.

It is true they reach abuses only when extravagance and improvidence degenerate into bad faith or fraud, but they apply to every official of every city, as well as to all State, county and town functionaries.

They apply to every case in which a city official shall, with intent to defraud, wrongfully obtain, receive, convert, pay out or dispose of any public moneys, funds, credits or property. They apply to every case in which such an official shall, with like intent, by willfully paying, allowing or auditing any false or unjust claim, or in any other manner or way whatever, aid or abet any other person in wrongfully obtaining, receiving, converting, paying out or disposing of any public money, funds, credits or property. They apply also to every person who, dealing with any official, shall, with intent to defraud, wrongfully obtain, receive, convert, pay out or dispose of any such money, funds, credits or property. They sweep away the complicated technicalities by which conviction for such offenses has hitherto been embarrassed or defeated.

One of these acts provides for every such offense penalties adequate to its enormity, in imprisonment in the State prison for not less than three nor more than ten years, and a fine not exceeding five times the amount of the loss resulting from the fraudulent act. Another provides for the arrest of the person and the attachment of the property of the wrong-doer.

The third of these acts provides for the contingency that the local governing officials shall be able to exercise influence over the officer whose duty it would be to order an action for redress of such a wrong, or whose duty it would be to conduct the suit; or, where a local influence might be exercised upon the judiciary; and enables the injured taxpayer to appeal to the State for relief, and gives a method of procedure both rapid and effective.

These laws, when they come to be generally known to the people, cannot fail to exercise a very salutary restraint upon all official persons. They afford a system of remedies hitherto unknown in our jurisprudence, which for their special purposes may well be deemed comprehensive, complete and effective.

ADDITIONAL MEASURES.

Additional measures of remedy and restraint can, no doubt, be devised in the legislation for local government. The taxpayers should be invested with powers of association and organization for the purpose of investigating the doings of their local officials and enforcing publicity, and for the purpose of instituting suits in the courts to restrain and redress public wrongs, without having recourse to the ultimate resort designed for great cases, in an action by the State. They might, also, be endowed with capacity to take and execute contracts for public work, under the supervision of, and on the plans fixed by, the municipal officers. There is no reason, for instance, why the persons taxable for the improvement of a street should not be allowed to associate, and by their own agents, execute the work for which they pay.

Even then a still broader field opens for measures of reform. To define the powers of the local governing officials in matters of expenditure, taxation, assessment, and to create an effectual responsibility of those officials to the voters of the locality, to establish official accountability on their part, to adopt the machinery most favorable to good administration — these are the objects which concern 2,400,000 of our people more deeply, perhaps, than any other question of administration that invites the public attention.

Duty of the State.

The duty of the State to establish constitutional provisions and to enact laws protecting, as far as practicable, the inhabitants of cities from abuses of maladministration committed by the local governing officials, and preserving the rights of individual citizens and of the minority as against the majority, is undeniable. That obligation results from the relations which exist between the State, in its collective capacity, and the local divisions of the State, and between the State and the local officers. In the theory of our civil polity, the sovereignty of the State, subject only to the grants it has made to the Union, resides in the aggregate people of the whole State.[p] All powers vested in the cities and incorporated villages, and in the municipal officers, and all powers vested in county and town officers, are theoretically delegations from the people, made by the Constitution or by laws authorized by and enacted in pursuance of the Constitution. At the same time their utility for the purposes of local administration is so recognized by the sentiments of our people that it has come to be justly considered as an obligation to make them and a right to receive them.

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[p] U. S. Const. 9th and 10th Am.

The powers intrusted by the State to the local officials are administrative, special, and for local objects. In the most completely developed municipality, they embrace the care of police, health, schools, street-cleaning, prevention of fires, supplying water and gas, and similar matters most conveniently attended to in partnership by persons living together in a dense community, and the expenditure and taxation money for these objects. The rights of persons, property, and the judicial systems instituted for their preservation — general legislation — government in its proper sense; these are vast domains which the functions of municipal corporations and municipal officers do not touch.

PROGRESS OF LOCAL SELF-GOVERNMENT.

The first Constitution of this State, formed in 1777, provided for the appointment and removal of all local officers by a council composed of the Governor, and four Senators chosen every year by four subdivisions of the Assembly.[q] The system continued until it involved the selection of fifteen thousand officers — civil and military — when our population was but one-third of its present magnitude. Every year assembled in Albany, from all parts of the State, candidates and their friends, for a general scramble. The strifes of parties were intensified by personal selfishness, and aggregated in a single center. The evils of the system contributed to the calling of a convention which formed the Constitution of 1821.

That instrument substituted election by the people of the localities or appointment by the local authorities, in respect to a large share of the local officers.[r] The question of how to disperse the appointing power, and yet preserve accountability to the State, was very thoughtfully considered by the foremost statesmen. Its solution was found in a device proposed by Daniel D. Tompkins, which was to separate the power of appointment from the power of removal. The case of the sheriff excited the most solicitude, and was elaborately discussed. It was disposed of by giving the election to the people of the county, but reserving to the State the power of removal, for cause, to be exercised by the Governor. The same method was applied to county clerks.

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[q] Const. 1777, § 23.

[r] Const. 1821, art. 4, §§ 8, 15.

The Constitution of 1846 extended the system to district attorneys and coroners.[a] It has been applied by constitutional provision or by statute to many other cases, and is now in operation as to the principal officers of the counties, probably embracing five hundred in number. A procedure has grown up in the nature of a summary trial.

The Convention of 1846 carried much farther its dispersion of the power of choosing local officers. It even allowed an election by districts of judges of the supreme court having general State jurisdiction, but it provided that they should be removable by impeachment, and also by the two Houses of the Legislature. County judges, surrogates, and all other judicial officers elected within the county, and all commissioned officers of the militia who are elective, were made removable by the Governor and Senate. Indeed, it is a characteristic peculiarity of the present Constitution to distinguish between the power of electing or appointing an officer, and the power of holding him to an account. In the words of my annual message: ‘ It is while dispersing the one to the localities to reserve the other to the State, acting by its general representatives and as a unit; to retain in the collective State, a supervisory power of removal, in addition to whatever other accountability may result to the voters or authorities of the locality from the power to change the officer at the expiration of his term or from special provisions of law. The two ideas are not incompatible; on the contrary, each is the complement of the other. Such dispersion of the appointing power has become possible only because these devices have been invented to preserve accountability to the State.'

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[a] Const. 1846, art. 10, § 1.

Through all our constitutional history the tendency has been to enlarge the power of localities in the management of such local affairs as are usually intrusted to their administration.

This policy has been developed not merely by conferring the power of local election, or of appointment by local authority of the officers on whom the duties of local administration are conferred, but also by the gradual enlargement of those duties.

ITS PRINCIPLE.

The political philosophy which has inspired this policy, is founded on the theory that the individual is the best judge of whatever concerns himself exclusively. It aims to enlarge the domain of the individual conscience and judgment as much as practicable, and to limit and simplify the action of the government in the affairs of individuals. A deduction from this philosophy is, that, where individuals are associated in a city, or incorporated village, or even in those subdivisions of the State that are termed in the law *quasi* corporations, there are certain powers of administration, mainly concerning the individuals so associated, which may be safely intrusted to their management under a proper organism, and in which they will be the best judges of the measures most wise and most adapted to their actual condition. The development of this system belongs to the sphere of practical government, and is to be worked out progressively.

Of the general truth of the theory and of the wisdom of this system, I entertain no doubt; and I have always endeavored to promote its wise application, and to try, by its principles, the measures which have been presented in its name.

ITS CONDITIONS.

The essential conditions of local self-government or home rule in respect to those powers of administration which are intrusted to the locality are:

I. That there be an organism under which the elective power of the people can act conveniently and effectively, and can exercise an actual control at one election over those who represent it in the local administration.

II. That, in voting upon the administration of local affairs, the popular attention and the popular will be freed, as far as possible, from disturbing elements, especially from complications with State and national politics.

The ancient system which exists in the country, and worked well in New York for a generation, by which municipal elections were held at a time intermediate of the annual State and national elections, has always commended itself to my judgment as of great utility and value.

III. That the popular will, as declared at the elections, should be protected, as far as possible, from the effects of undue concentration of power, patronage and the means of corrupt influence.

IV. That while the responsibility of public officers to the voting citizens be made effective, and they be made amenable to the taxpayers of the locality through the courts, accountability to the State be preserved through regular methods, so that the existence of such appeal of the minority and of individuals against the wrongs of governing officials will render unnecessary and inexcusable the frequent legislative interventions which have practically destroyed all self-government, created more local mischief than they have remedied, and have grown to be prolific of abuse and corruption in the legislative bodies.

So far from official accountability in regular forms being an abridgment of local self-government, it is the foundation on which this system can alone be built up. Arbitrary or irresponsible power finds no place in our popular system of government. The public officers are the trustees of the people. The majority are trustees for the whole, for the minority, and for each individual.

At the present time the Senate and Assembly, and the Governor, are largely occupied by attention to measures which are in the nature of appeals from the local administrative officials. Legislation is daily asked for, not merely for the purpose of enlarging or modifying the powers of those officials according to the local wants, but for overruling their judgment, correcting their errors, and redressing their wrongs. The granting or refusing of such legislation often involves questions of extreme difficulty, to investigate and decide the merits of which is quite beyond the power of the legislative bodies, or the Governor, especially in the multitude of topics that accumulate in the closing weeks of the session.

EXPERIENCE OF THE METROPOLIS.

The most instructive chapter on the subject of municipal government which is to be found in our civic history, is the experience of our great metropolis which stands so conspicuous, not only in this State, but throughout the Union and before the world.

As great cities are rapidly growing up in other parts of the State, we may study that experience with advantage. Anterior to the Constitution of 1846, the practical governing population of this State was agricultural. Comparatively little attention had been paid to municipal government. In that instrument, while county and town systems receive comparative protection, the charters of cities and incorporated villages were left almost absolutely within the control of the Legislature.

CHARTER OF 1830.

The city of New York had gone on under a simple, popular government which had many elements of great value. Substantially, the administration was conducted by the mayor and two boards of the common council, their committees, and the officers appointed by them. The elections were separate, in the spring of the year, and were annual. Popular opinion easily became effectual in controlling the policy of government. A political revolution was frequently produced by the charge of excessive expenditure on the part of the city government. The liability to change, the exposure to publicity made any elaborate and prolonged plans of plunder unsafe, if not impossible.

It is not meant that the deterioration that afterward ensued is to be ascribed wholly to the new methods of government adopted.

INJURIOUS CHANGES.

Doubtless important changes have occurred in the conditions under which the municipal government is carried on. Changes in the population — a loss of the habit of acting in city affairs, resulting from the inability to act with effect during twenty years in which the elective power of the people has been nugatory — decay of civic training forced exclusion and voluntary withdrawal from participation in local government for a generation — the absorption of the public attention in the controversies of national politics, leading to an almost total neglect of the questions of administration on which the competitions of politics formerly turned — the vast disproportion in the numerical strength of parties formed on sectional questions; these are causes which make the machinery of popular government work less favorably than before.

But it cannot be doubted that various changes, originating in a false theory of government and continuing through a series of years, by which the legislative power was very much weakened, and the spending officers became not only exempt from any regulation by the legislative bodies and practically irresponsible, but by means of their patronage acquired practical control in the government, and a complexity of system by which the elective power of the people became ineffectual — were steps in a downward progress.

INTERFERENCE WITH LOCAL GOVERNMENT.

The abuses and wrongs of the local administration which found no redress generated a public opinion under which appeals was made, in the name of reform, for relief to the legislative power at Albany; and it was found that an act could be easily contrived whereby one official could be expelled from office, and, by some device, a substitute put in his place. It was found likewise that the powers of an office could be withdrawn and vested in a different officer or in a commission, the selection of which could be dictated from the State Capitol.

It is the experience of human government that abuses of power follow power wherever it goes. What was at first done, apparently at least, to protect the rights of the minority or of individuals; what was first done for the sake of good government, came in a little time to be done for the purposes of interested individuals or cliques. Differing in politics as city and State did, party selfishness and ambition grasped at patronage and power, and the great municipal trust came to be the traffic of the lobbies. Institutions wholly unfit to answer any use or object of government in a civilized community, and by virtue of their structure capable of nothing but abuses growing into crimes against the communities in which they existed, such as the board of supervisors, erected in 1857, came into existence under the motive power of the division of the spoils which they partitioned between their contrivers, combining equal numbers from both parties.

CHARTER OF 1870.

The consummation of this deceptive system was in the charter of 1870, which was enacted in the name and under the pretense of restoring local self-government. It was a long document, full of minute regulations, copied from preceding laws; but its vital force and real object resided in a few sentences. It totally stripped the elective councils of all legislative power, and covered up that design by several pages, in which it enumerated ordinances the councils had, from time immemorial, power to establish, but which had never been thought worthy of mention in any previous act of legislation.

It practically vested all legislative power in the mayor, comptroller, commissioner of public works and the commissioner of parks. It vacated the offices of the existing incumbents at the end of five days, and provided for the appointment of their successors by the then existing mayor who was one of the quartet. Every device to make these four officers totally irresponsible was carefully adopted. The existing law, which had stood for many years, by which the mayor, comptroller and street commissioner had been removable by the Governor, as in the case of sheriffs, was repealed. A restoration of that power of removal, as regards the mayor, was demanded in the following year, and in 1873, was accorded, with the unanimous consent of both political parties.

This charter, which practically put in abeyance the elective power of the people of the city of New York for years, and set up an oligarchy of four persons, who, aided by a subsequent amendment, had all powers of expenditure and taxation — of legislation and administration over a million people, was enacted under the pretense of restoring local self-government. It was objected at the time that those officers so appointed were, to all practical intents and purposes, a commission, just as under the system which was to be abolished, that they were, in effect, as much appointed by the State Legislature as if their names had been inserted in the law; and that the elective power of the people was annulled, and rulers set over them without their consent.

How unanimously that charter passed — by what barter of the municipal trusts and corrupt use of municipal money — and how, within a month, the officers placed by a legislative act, without the intervention of a new election, in supreme dominion over a million of our people, divided up four millions of a pretended audit of six millions, are now matters of history. These were the fruits, not of a popular election, not of local self-government, but of the culmination of a system under which the governing officials had been practically appointed by legislative acts of the State. The device of creating a special appointing power to do what was desired by a clique or party, or was agreed upon beforehand, was not perfectly new. It had been frequently used in a smaller way.

The contagion of such practices threatens to extend to other cities. If public opinion and the state of the Constitution and laws allow it, the temptation to transfer the contest for offices from the local elections to the legislative halls will arise as often as aspirants are defeated and can expect to recover there what they have lost at home. There is no remedy but in the refusal to give to such devices the sanction of law, until constitutional provision shall give permanency to the methods of appointment and removal in municipal governments.

1873.

The charter of 1873, while it contains many provisions that are valuable, still leaves to the heads of departments the power to create offices and fix their salaries, which no one has ever thought of conferring on the Governor or the Comptroller of the State, who are properly subject to the specific and minute regulations of law; and it leaves all the power of levying taxes, spending money, contracting debt, to a large extent, and all the powers of legislation, in the hands of the mayor, comptroller, commissioner of public works, and the president of the department of taxes.

In the hands of every one of the present incumbents, we have the satisfaction to believe that the interests of the people are perfectly secure; but we ought to consider what manner of institutions shall be formed for the long future with its varied changes of official persons — whether we will continue such vast powers, having no parallel in any government.

The charter of 1873 sought to shun the defect of the charter of 1870 in respect to removals. It restored the power of the removal of the mayor by the Governor. It provided for the removal of heads of departments by the mayor, subject to the written approval of the Governor, thus establishing an artificial check upon an artificial system; aiming to secure independence except in case of official misconduct on the part of the members of the body on which it conferred such extraordinary powers; and shrinking from converting an oligarchial into a despotic system.

At the present session, various propositions have been introduced, and others have been suggested, for changing the powers and patronage of the city government. None of them have come before me for official action. No comprehensive or well-considered system has been proposed. Hasty and partial changes by laws which, however plausible on their face, cannot be judged of except through an acquaintance with the whole mass of preceding legislation upon which they operate, and likely to produce results not foreseen by their authors, were not desirable.

In the better times of government and legislation in this State, when the traditions of popular rights were respected, the formation of a charter for a great city was a matter of deliberation. The people to be affected were fully consulted. Generally a convention of their representatives was held to consider the matter, full opportunity was given to discuss and perfect so important an instrument. The people were allowed to elect their chief officers with a knowledge beforehand of the substantial nature of the powers these officers would exercise. The idea of working a total revolution in the depositaries of governmental powers, by a legislative act, without the intervention of an election that should allow the people to say on whom new and vast powers should be conferred, would have been treated as a gross invasion of the rights of the people.

Even in restoring the legislative power to a legislative department of the city government, the new Legislature ought to be formed according to the best traditions and the best experience of American government; and the people ought to be allowed to choose it at a fresh election, and in contemplation of the new powers conferred which amount to a new creation.

I am not inclined to tamper by inconsiderate and fragmentary legislation with the government of the metropolis, or of the other great cities of the State, but I feel profoundly the necessity of attention to the structure, power and duties of those governments; and when we do constitute a new system, I am anxious that it should answer the just expectations of the people. There is no subject which to-day interests them more deeply; no subject more complicated or more difficult of solution; none which requires more thoughtful attention, more thorough discussion, to mature results with which we shall be satisfied in future years. There is no case in which it is more your duty and mine to say to those who seek changes: 'You must found your claim to the advantages of political and official power upon the best promise of good government in the nature of the institutions you propose. You must accept official accountability as a condition of official trust.'

I have set forth some of the evils which have followed the violation of sound principles of government in the city of New York, not only to show the wrongs to which the people of that municipality have been subjected, but also to illustrate the dangers which threaten other cities, unless we can fix sound principles in the minds of our people and make them operative in the legislative bodies or entrench them in the Constitution.

The people comprised in the cities of the State, exclusive of New York, are to-day more numerous than the inhabitants of the metropolis. They form a larger portion of the population of the State. This is exclusive of the incorporated villages.

If local self government or home rule is to be secured to them, and they are to be protected from the abuses which naturally happened earlier in New York, it must be done by the establishment of a general system, which shall be respected by the people and by their representatives. The Legislature is burdened by numerous applications for changes in local laws, the operation of which on the preexisting mass of legislation cannot be easily ascertained. This obscurity is often a cover under which the objects of selfish individuals or cliques or partisan purposes are concealed. Every revolution of politics in the locality or in the State is followed by efforts to change the governing power or to effect a new disposal of offices and patronage in the locality. Such demoralizing efforts could not be readily effectual, if well-defined principles of government pervaded all municipal charters. Diversities will no doubt continue to be unavoidable, but the advantages of general laws over special legislation now recognized in our political theories and maxims, should be extended, as far as practicable, to our city governments. Whatever can be accomplished by legislation to correct the evils growing out of the discordant charters which now exist, and to infuse into them general principles that shall become a guide to future legislation, ought to be done. But the only effectual remedy is in amendment of the Constitution fixing the general plan of municipal government, especially in respect to the appointing power, and at the same time establishing, on a durable basis, official accountability.

With a view of calling public attention to this subject, and of laying the foundation of a plan of legislation and of constitutional amendment, I recommend the appointment of a commission who shall report to the next Legislature the forms of such laws or constitutional amendments as are required. If you do not think it advisable to constitute such a commission, the revisers of the statutes might be instructed to collate and report upon the condition of the laws relating to the cities in aid of future action by legislation or constitutional amendment.[19]

SAMUEL J. TILDEN."

May 11. To the Assembly:

Veto of a bill entitled "An act to regulate coroners' inquests in the city and county of New York, and to provide for the payment of services rendered by scientific persons as experts."[20]

"This bill is so loosely drawn as to open the door to unnecessary and extravagant expenditure, and to the recovery of stale, doubtful and excessive claims. Some legislation upon the subject is doubtless desirable, but a bill providing for the settlement and payment of demands so indefinite in their nature, should contain guards which this bill does not provide.''

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[19] Responding to the Governor's municipal reform message the Legislature adopted the following concurrent resolution:

"WHEREAS, The Governor, in his special message of May eleventh, eighteen hundred and seventy-five, called the attention of the Legislature to the evils arising from our present unstable municipal systems, and the necessity of adopting a permanent and uniform plan for the government of the cities of the State; therefore,

"*Resolved*, That the Governor be and hereby is authorized to appoint a commission of not more than twelve persons, whose duty it shall be to consider the subject referred to in the said message, to devise a plan for the government of cities, and to report the same to the next Legislature.

"*Resolved*, That the Committee on Ways and Means report a suitable appropriation to defray the actual expenses of the commission, to be audited by the Comptroller, provided that the commission shall receive no compensation for their services."

Governor Tilden appointed the commission provided for by the resolution and its report was submitted to the Legislature of 1876. [See 1876, note 13, *post*, p. 951.]

[20] The New York coroners' inquests bill was not passed over the veto, but a new bill on the same subject was passed and became a law, chapter 620, on the 21st of June.

May 17. To the Senate:

Veto of a bill entitled "An act to confirm and legalize certain acts of the common council of the city of Elmira."[21]

'' The bill enacts that a resolution of the common council of the city of Elmira ordering the paving of a street with a special patent pavement — the contract of the mayor under such resolution — and the resolution of the common council assessing for the expenses of the work ' are hereby declared valid and legal, and in full force and effect.' It then adds that ' all official acts of the said common council and mayor ' under the said resolutions, ' the contract made pursuant thereto,' and ' all acts relative to the ordering and paving ' of the street, and ' the assessment for the cost and expenses thereof ' shall be held ' valid and legal and in full force and effect.'

The last clause does not specify what acts it legalizes. It does not confine its operations to acts of the mayor and common council or of any public officer.

No part of the bill specifies the nature of the illegalities which it cures. It is not limited to informalities or irregularities which involve no substantial wrong to individuals and no violation of public policy. If there were surprise, fraud or corruption; if there were a total want of jurisdiction; if there were a breach of a sound public policy which established guards for the protection of private rights against abuses in assessments; if there were substantial injury and injustice to individuals; if there were every conceivable wrong possible to occur in such a matter, this bill, in as sweeping terms as human language can supply, adopts them on the part of the legislative power of the State; strikes out of existence the private rights which have been disregarded, and annuls all judicial remedies by which they can be asserted or defended.

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[21] The Elmira legalizing bill was not passed over the veto, but another bill on the same subject was passed, and became a law, chapter 601, on the 18th of June. The new bill, following the Governor's suggestions, materially modified the effect of the ratification as stated in the original bill, specifying particularly the acts of the common council of Elmira which were and which were not deemed ratified.

In a similar case, where the language of the bill was certainly no broader, and where the defects were not alleged to be more than technical or formal, the mayor and other officers of one of our principal cities attended in person to show the great evils that would result if the defects were not cured; but I felt it to be a clear duty to withhold my sanction from a bill expressed in language of dangerous generality. Such loose legislation is of evil example upon the statute book, even if it works no actual injustice in the case which is the first precedent. Those who seek these bills are anxious to be sure to make them broad enough for their own present object; and are not concerned as to the possible injury and injustice to others, or the evil policy that may inadvertently result. The loosest precedents are most likely to be copied. A bad practice in a few cases grows into all authority.

Healing statutes are enacted where public policy would sustain official acts that are invalid by reason of oversight or inadvertence, and some private rights are benefited and some harmed by the confirmation. On the same principle, instruments executed by private persons are sometimes aided. Out of such precedents has arisen a disposition on the part of municipalities to apply for statutes curing informalities or irregularities in the acts of their officers in respect to local assessments. A natural inclination to favor their own powers, and to fall in with expedients which increase the fund at their disposal for expenditure out of the same taxes, tends to enlarge the scope of such bills. Questions between the municipality and particular taxpayers become frequent. Hearings before the Governor are asked for. In a recent instance numerous parties and several counsel attended. In the present instance nine suits were pending when the bill passed. In such cases every variety of conflicting rights and conflicting equities are presented. It is quite clear that such bills, if tolerated at all in cases that are disputed or in the process of litigation, should show on their face that they are carefully limited in their operation; that they will not contravene the policy which imposes reasonable restraints for the protection of individual and personal rights of innocent third parties.

It is a sufficient objection to the present bill that it contains none of these qualifications, but is expressed in the broadest terms.

But to this objection is added the fact that the several remonstrances of taxpayers of Elmira allege that substantial wrongs were committed in the assessment; that jurisdiction was never acquired; that the proceedings were tainted by fraud and bribery; and that aldermen were interested in the contract, which was thereby rendered void by an express provision of the charter of Elmira.

I do not assume that these allegations are true in fact; but I cannot see that those who make them should be cut off from the right of trying to prove them in the court, or that the issues they raise ought to be tried in the Executive chamber.

The saving clause in the bill saves nothing; for the nine suits existing when the bill was passed, being instituted by the city, have been, as I am informed, or are about to be, discontinued, for the purpose of renewing them after the bill should become a law."

May 17. To the Senate:

Veto of a bill entitled "An act to authorize the Board of Police of the city of New York to grant new trials."

"This bill is objected to by every member of the board, and by the experienced officers of the police. Their unanimous judgment has been communicated to me that, if it becomes a law, it will seriously impair the discipline of the police force, on the efficiency of which the good order of the metropolis depends. It is said to have been introduced in the interest of two dismissed policemen, who would like to be restored, but whose hope would be sure to prove illusory.

I have no doubt, in forming an independent conclusion, that the bill ought not to become a law. Certainty in the punishment for infractions of discipline, disobedience or neglect of duty, is of far more importance than severity. Celerity in the infliction of penalties, finality in the trial, are the essence of discipline. Such trials now consume an afternoon session, on about three days of each week. Every person convicted will desire a re-trial, and will struggle to make a case for restoration. Evidence will be lost, the fear of punishment weakened, and the effect of punishment actually imposed will be impaired by the continuing hope of eventual escape. The board will be overwhelmed with trials.

If an injustice to an individual does sometimes happen by a misjudgment, it is an insignificant evil compared with the introduction of a new and potent element of disorganization and demoralization to the whole service.

The act provides that, in case of a decision in favor of the policemen, on a new trial, he shall be restored by operation of law. In the meantime the office will have been filled, and this provision would produce two incumbents in one office, and would be prolific of claims for back salaries."

The bill was not passed over the veto.

May 17. To the Assembly:

Veto of a bill entitled "An act to regulate the course of proceedings at a trial on a charge of felony after a previous conviction for felony."

"This bill provides that upon the trial of a person charged with felony after a previous conviction of that crime, the offender shall first be arraigned on so much only of the indictment as charges the subsequent offense; that if a plea of not guilty is entered, the jury shall first inquire whether he is guilty of the subsequent offense; that if he pleads guilty, that then the jury shall inquire concerning the previous conviction.

There is no express provision for any inquiry as to the fact of the previous conviction, where the prisoner is found guilty of the subsequent offense after a trial on the merits, and as penal laws are to be construed strictly, it is at least doubtful whether such an inquiry could be had.

Well settled rules of the administration of the criminal law should not be altered for light reasons, nor without the exercise of great care to avoid the introduction of new and doubtful questions of construction.

This bill is loosely drawn, and does not fully provide for all the exigencies which may arise under it. For instance, where the prisoner pleads guilty of the subsequent offense, and the jury disagree as to the fact of the previous conviction, it cannot from the language of this bill be gathered whether the prisoner is to be sentenced for the lesser offense or whether there must be a new trial upon all the issues.

The apparent purpose of the bill is to guard against the jury being prejudiced by the fact of the previous conviction.

With an intelligent jury, acting under the guidance of an experienced and learned judge, there can be no danger of serious injury to the rights of the prisoner at all comparable to the evils which result from a hasty and ill considered change in the well settled rules of conducting trials of criminal cases. Besides, under this bill as amended in the Senate, the jury might be informed of the previous conviction by the reading of the indictment.

So long as several different misdemeanors can be charged in the same indictment, and tried at the same time, there can be no impropriety in trying at the same time all the questions involved in the allegation of a single crime, although they involve distinct issues."

The bill was not passed over the veto.

May 17. To the Assembly:

Veto of a bill entitled "An act in relation to the Chautauqua Lake Camp Meeting Association of the Erie Conference of the Methodist Episcopal Church."

"The corporation named in the title of this bill is the owner of a large tract of land, a portion of which has been subdivided into lots, and leased for long terms to various persons, who may or may not be incorporators, and who have erected cottages thereon. I am informed that these leases contain no reservation of rent, and no provision authorizing any assessment to be made by the corporation upon the leased property for any purpose.

This bill provides that the corporation may levy a tax upon the real and personal property within or upon its grounds for the purpose of paying the salary of a janitor and improving and protecting the property, not exceeding five hundred dollars in any one year, unless otherwise ordered by a vote of two-thirds of the property holders. It provides for the election of an assessor and a collector, and the mode of assessing and collecting the tax corresponds generally with that prescribed for the assessment and collection of town taxes.

In my opinion it would be a dangerous innovation for the State to delegate any portion of its taxing power to a private corporation.

The object sought to be obtained by this bill can be better accomplished by an agreement between the persons interested.''

The bill was not passed over the veto.

May 22. To the Assembly:

Veto of a bill entitled "An act to authorize the taking of certain lands in the city of Buffalo for the purpose of the continuation of Fillmore Avenue from its present southerly termination to the westerly side of Hamburg turnpike, and for improving and embellishing the same."

'' This bill authorizes the city of Buffalo to open a certain avenue, one hundred feet wide, and to enlarge an existing street to the same width, and provides that the lands ' so taken shall be one of the approaches or connections to said park, and may be controlled, improved and embellished in the same manner, in all respects, as land heretofore taken under the act of 1869.'

Chapter 165 of the Laws of 1869, which is supposed to be the act referred to, provides that the expense of improving and embellishing the lands taken thereunder for a park, shall be met by the issue of bonds of the city of Buffalo.

The city now has ample power to open and improve streets, assessing the expense thereof upon the property benefited thereby.

The only object of this bill is, therefore, to place the control of the avenue to be opened in the hands of the park commissioners, and to cast the expense of improving and embellishing the same upon the city at large, instead of upon the property benefited.

I am unwilling to assent to any bill which, without urgent necessity, shall increase the present heavy indebtedness of the city of Buffalo, or shall add to the very heavy burdens which now rest upon its taxpayers, especially where, as in this case, it is not asked for by the municipal authorities.''

The bill was not passed over the veto.

May 22. The Legislature adjourned without day.

THIRTY-DAY BILLS.*

June 16.

Veto of the following items in Assembly bill, chapter 594, entitled "An act to reappropriate moneys for the construction of new work upon, and extraordinary repairs of the canals of this State, and for payment of awards of the canal appraisers."

"*Section* 1 is a reappropriation of the balance remaining unexpended on the 16th day of May, 1875, of an appropriation of $776,855.28 appropriated in 1871 and reappropriated in 1873, being $20,000, or thereabouts, for a swing or drawbridge in Buffalo street, in the city of Rochester.

It appearing that the construction of the said bridge is provided for by a series of laws, that it is under contract, and approaches completion, this item, irrespective of the question of its original wisdom or policy, is allowed to pass.

Section 2 is a reappropriation of the unexpended balance of $984,630.89 appropriated in 1873, such balance being the sum of $281,179.62.

This balance is reappropriated by thirty-nine separate items.

ITEM No. 1.—'For repairing bottom and banks of the Erie Canal along the premises of Stillman A. Fields, in the town of Canajoharie, so as to prevent leakage upon the premises of said Fields, and for constructing a waste ditch along the premises of Samuel Beekman in said town, so as to carry back waters of the Erie Canal, the sum of five hundred dollars, or so much thereof as may be necessary.'

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* By an amendment to the Constitution, approved in 1874 (art. 4, § 9) a provision was added that "no bill shall become a law after the final adjournment of the Legislature, unless approved by the Governor within thirty days after such adjournment." The amendment took effect January 1, 1875, and consequently bills passed at the legislative session in that year became for the first time subject to the operation of the new rule. For many years prior to this amendment the consideration of bills was often postponed several months after the adjournment of the Legislature, and in some instances vetoes were filed by the Governor near the close of the calendar year. The same amendment authorized the Governor to veto separate items in appropriation bills.

I object to this item. The work, as I am informed, has not been let. If necessary in 1873, it has been strangely neglected. Work of this character, and so inconsiderable in extent, ought to be done as ordinary repairs.

ITEM No. 2.—'For constructing iron bridge superstructures on the Eastern Division, made necessary in consequence of change of plan, the sum of ten thousand seven hundred and twenty-seven dollars and ninety-three cents.'

I object to this item. If changes in the structure of bridges are to be made, they should be done upon a systematic plan, duly considered by the canal board, with the approval of the State engineer, and an examination of the particular case should be had to decide whether the proposed change is clearly necessary for public purposes.

The tendency to change the innumerable bridges over the canal, at the instance of private persons and local influences; to conform to a prevailing fashion, the contagion of which passes from one bridge to another — in the absence of any resisting power in behalf of the State, which finally pays the cost of the change — is a serious and growing evil. The applications for swing bridges — tearing down the existing bridges — are becoming frequent. They are demanded by some individual, corporate or local advantage— real or imaginary. They are usually in places which have been already largely benefited by the construction of the canal. They impose on the State a large extra cost, and charge it with an annual expense for operating each one equal to the interest on about $25,000. There are 1,318 bridges over the canals, and the erection and operation on this plan of one-sixth of this number would probably cost the State as much as the original outlay for the Erie canal. The fashion is full of danger.

ITEM No. 3.—'For raising the Rocky Rift Feeder Dam, the sum of one thousand three hundred and fifty-nine dollars.'

The item of $1,359 remaining unexpended will about complete the existing work and the payment for it.

ITEM No. 4.—' For the construction of a farm bridge over the Rocky Rift Feeder, on the lands of John H. Keyser, in the County of Montgomery the sum of two hundred and fifty dollars, or so much thereof as may be necessary.'

I object to this item. As the work has not been let and no steps taken towards it, the necessity cannot be pressing, and the money had better be covered into the treasury.

ITEM No. 5.—' For constructing and maintaining a highway bridge over the Erie canal in the town of Watervliet in the county of Albany, from the Ireland Corners Road on the west of said canal to Island Park on the east of said canal, the sum of seven hundred and twenty dollars.'

The unexpended balance was reduced on 28th May, 1875, to $600, but the account not closed.

ITEM No. 6.—' For raising iron bridge superstructure on Genesee street, Utica, to the height required, and adapting approaches to the same, the sum of two thousand two hundred and twenty-one dollars and forty cents.'

I object to this item. The work has been finished and paid for, and the balance ($2,221.40) should be covered back into the treasury.

ITEMS Nos. 7 and 8.—' For removing wall benches and constructing slope walls on the towing path side of the Erie Canal, between the east line of the city of Utica and lock number forty-five at Frankfort, and between lock number forty-six and Whitesboro Street Bridge, in the city of Utica, the sum of twenty-nine thousand five hundred and forty-five dollars; and between lock number thirty-three and section number seventy-five, the sum of three hundred and forty dollars.'

The unexpended balance, I am informed, will be consumed by existing contracts.

ITEM No. 9.—'For removing wall benches and constructing slope walls, elsewhere on the Eastern Division of the Erie canal, under direction of the Canal Board, the sum of five thousand seven hundred and thirty-four dollars.'

I object to this item. On the 15th October, 1873, the Canal Board set apart from the sum appropriated by the original appropriation $1,650 for 300 feet of vertical wall at the Locomotive Works in Schenectady; of which had been expended up to January 8, 1875, $1,224, leaving a balance of $426; and on the 11th December, 1873, the Canal Board set apart from the same appropriation, for the work extending from the junction of the Chenango Canal to the east line of the city of Utica, the sum of $10,000, of which had been expended up to January 8, 1875, the sum of $4,692, leaving a balance of $5,308. The sum reappropriated by this item is made up of these two balances. These acts of the Canal Board were illegal, as the sums set apart were diverted from the purpose for which they were appropriated.

ITEM No. 10.—'For constructing blind drains on section number one hundred and eleven, west of lock number forty-six, the sum of eighteen hundred dollars.'

I object to this item. This work has been done and paid for under another contract.

ITEM No. 11.—'For rebuilding wooden lock of stone on the Glens Falls feeder, the sum of seventeen thousand one hundred and fourteen dollars.'

This sum will be absorbed by existing contracts.

ITEM No. 12.—'For completing bridge over Fort Edward Feeder, the sum of five hundred dollars, or so much thereof as may be necessary.'

This expenditure has been incurred.

ITEM No. 13.—'For taking down dry vertical walls and relaying the same in cement, in order to avert claims against the State, in consequence of leakage from the Erie Canal into the cellars of adjoining property owners in the city of Syracuse; and for removing bench walls and constructing vertical walls, when necessary, on the Syracuse level of the Erie canal, the sum of four thousand eight hundred and seventy-seven dollars and thirty-six cents.'

I object to this item. The sum of $10,000 was originally appropriated for this purpose, with the provision that the Commissioner in charge should, before expending any of the money, procure a release of all damages on account of such leakage, free of charge to the state. From this sum, three amounts, being in the aggregate $5,122.64, have been set apart with the approval of the canal board, and expended. This balance is not now subject to draft for work under any existing contract.

ITEM No. 14.—'For removing bench walls and substituting slope walls upon the towing path, Jordan level and long level of the Erie canal, and for constructing two hundred lineal feet of vertical wall opposite the marble works of McCarty & Paul, and the malt house of Adam & Co., in the village of Weedsport, the sum of twenty-four thousand three hundred and eighty-nine dollars and eighteen cents.'

This is the unexpended balance, January 8, 1875, of an appropriation made in 1873, of $40,000 for the purposes named. The vertical wall is completed and paid for. The other work is progressing under contract. The division engineer on the 2d of October, 1874, estimated that the cost of completing the work would be $225,370. The sum of $113,000 was set apart from an appropriation of $360,000 made in 1874 for the purpose of continuing the work. The existing contracts will evidently absorb all of this item, after making allowance for all deductions.

ITEM No. 15.—'For extending abutments, raising and widening approaches to highway bridges at East Frankfort, the sum of two hundred and twenty-five dollars.'

I object to this item. The work is completed and paid for, and the balance should be covered into the treasury.

ITEM No. 16.—'For constructing iron bridge superstructures on the middle division of the Erie canal, made necessary in consequence of the change of plan, the sum of fifteen thousand dollars.'

I object to this item for the reason stated with respect to item No. 2 of this section.

ITEM No. 17.—'For a wrought iron foot bridge over the Erie canal at Franklin street, in the city of Syracuse the sum of one thousand nine hundred and twenty-two dollars.'

I object to this item. I am informed that the final account for this work was rendered March 2, 1875, leaving a balance of $573.16, which may properly be covered into the treasury.

ITEM No. 18.—'For building one hundred and fifty feet of vertical wall on Erie canal, in the village of Port Byron, in front of the property on the Thompson Patent Paper Manufacturing Company, the sum of seven hundred and fifty dollars, or so much thereof as may be necessary.'

This work is probably completed, and the appropriation is absorbed or will be in the final settlement.

ITEM No. 19.—'For rebuilding broken culverts at Oswego, and repairing docking and improving side-cuts at Salina; building vertical wall at necessary points on the Liverpool level, and such other improvements of the Oswego Canal, as shall be directed by the Canal Commissioners, the sum of nine thousand eight hundred and thirteen dollars.'

The amount of this item seems to be in excess of the sum required to complete the work; but I am not informed whether a final account has been rendered, and the completed work paid for.

ITEM No. 20.—'For repairing the State piers in the harbor at Geneva, the sum of one thousand four hundred and forty-eight dollars.'

This balance of $1,448 was, by payments made since the item was originally drawn, reduced upon a final settlement to eighty-four cents. As a reappropriation is not necessary, I object to this item.

ITEM No. 21.—'For constructing vertical wall on the berme side of the Cayuga and Seneca Canal, near the junction with the Erie canal, in the village of Montezuma, the sum of one hundred and ninety-four dollars.'

This amount seems to have been wholly expended.

ITEM No. 22.—'For the completion of the Oneida Lake Canal, the sum of twenty-five thousand dollars.'

The history of this work is very interesting, as illustrating the manner in which work has been done on the canals, and in which illegalities and irregularities have been attempted to be cured by the action of the Canal Board and the Legislature. The auditing officer will doubtless see that the legal rights of the State are preserved.

ITEM No. 23.—'For deepening and improving the Erie canal, between Slip number three and York street, in the city of Buffalo, as authorized by the Canal Board, August 6, 1872, and completing division bank and other work connected therewith in Black Rock Harbor, so as to separate the canal from and make it independent of said harbor, the sum of thirty-seven thousand four hundred and twenty-seven dollars and forty-two cents.'

This appropriation, as I am informed, is nearly all expended under existing contracts.

ITEM No. 24.—'For completing the removal of bench walls, and constructing slope walls, and removing about one hundred and fifty feet of slope wall and substituting vertical wall therefor, in front of the premises of Nelson McCormack, about one mile east of the canal collectors' office in the village of Medina, in the Erie canal, if in the judgment of the Canal Commissioner in charge it shall be deemed necessary for commercial purposes, and for other works under contract on the Western Division not sufficiently provided for, the sum of nine thousand and fifty-six dollars and forty-eight cents.'

I am informed that the sum reappropriated by this item will be nearly or quite expended before this bill can become a law.

ITEM No. 25.—' For cleaning out, improving and deepening the canal an average of six inches below established grade, between Thomas Creek Culvert and Macedon Locks, the sum of ten thousand dollars.'

The contract for this work has, I am informed, been let for less than the sum appropriated, and is nearly or quite fulfilled, but there has been no final settlement with respect to it.

ITEM No. 26.—' For constructing and maintaining a roadbridge over the Erie canal, connecting Averill and Munger streets, in the City of Rochester (subject to the provisions of chapter three hundred and ninety-nine of the laws of eighteen hundred and seventy-four) the sum of ten thousand dollars.'

The work is let under the same contract with that mentioned in section first of this bill, and the observations made in regard to that section apply equally to this item.

ITEM No. 27.—' For aiding in constructing a bridge over the Tonawanda Creek, according to provisions made in chapter 863 of the Laws of 1867, the sum of eight thousand dollars.'

I object to this item. This sum was originally appropriated in 1867, for the purpose of building a bridge under the direction of commissioners, upon condition that the towns interested should raise a sufficient sum to complete it. Nothing has ever been done under the Act, and, in my opinion, the offer of the State ought, after having been open for acceptance for eight years, to be withdrawn.

ITEMS Nos. 28, 29 and 30.—'For constructing one hundred and twenty-five feet of vertical wall on the berme side of the Erie canal, in front of the premises of J. W. Paster and others in the village of Port Gibson, Ontario County, the sum of six hundred and twenty-five dollars.'

'For deepening Erie Basin, Buffalo harbor, the sum of twelve hundred dollars.'

'For dredging and excavating in Black Rock Harbor, the sum of two thousand, two hundred and twenty dollars.'

The work mentioned in these items, I am informed, has consumed what remains in the treasury awaiting a final settlement.

ITEM No. 31.—'For building one hundred and fifty feet of vertical wall on the berme bank of the Erie canal at Macedon, east of the bridge commencing at the easterly end of the present wall, provided that parties interested in said wall, without expense to the State, make all necessary excavations and place the banks of the canal in a suitable condition for said wall, as the Canal Commissioner in charge shall direct, the sum of four hundred and fifty dollars, or so much thereof as may be necessary.'

I object to this item. Nothing has been done under the appropriation, because the parties interested have not complied with the condition. They should not only make the excavation, but pay for the wall, if they wish it for their own convenience.

ITEM No. 32.—'For constructing iron bridge superstructures on the western division of the Erie canal, made necessary in consequence of change of plan, the sum of fifteen thousand dollars.'

I object to this item, for the same reasons for which I objected to item No. 2.

ITEM No. 33.—'For the construction, by the Sodus Point and Southern Railroad Company, of three hundred and fifty feet of vertical wall on the berme bank of the Erie canal, in the village of Newark, Wayne County, about two hundred feet westerly from the point where the iron bridge of said road crosses the canal, the sum of fifteen hundred dollars.'

I object to this item. If this work is for the interest of the State, it should be done by the State. If it is for the interest of private persons or corporations, they should pay a part or the whole of the expense.

ITEM No. 34.—' For removing the remains of State Dam on Scajaquady's Creek, and the bars in said creek adjacent thereto, the sum of seven hundred and forty dollars.'

The work is under contract and in progress.

ITEM No. 35.—' For the removal, replacement and repair of the bridge on Ohio street, over the Clark and Skinner Canal, the sum of nine hundred dollars, or so much thereof as may be necessary.'

I object to this item. This work was let October 14, 1873, but nothing whatever has been done under the contract. The necessity for the work does not seem, therefore, to be pressing.

ITEM No. 36.—' For repair and construction of docking on the Clark and Skinner Canal, the sum of nine hundred and seventeen dollars and eighty-five cents.'

The parties interested should have paid the whole or part of the expense of this work, but the contract has been made, the work nearly completed, and most of the money drawn.

ITEM No. 37.—' To pay the town of Pittsford four hundred dollars, and the town of Brighton six hundred dollars, or so much thereof as may be necessary, for damages caused by water flowing from the side cuts in the Erie canal during the freshets of the Spring of 1873.'

These sums have been paid by the checks of the Commissioner instead of drafts upon the Auditor, and therefore results this apparent balance.

ITEMS Nos. 38 and 39.—' For aiding in the construction of a bridge over the Genesee river, at Mount Morris, used as tow-path of the canal, three thousand dollars, or so much thereof as may be necessary.'

' For constructing one hundred feet of vertical wall on the berme side of the Erie canal, in the village of Pittsford, in front of Eckler's warehouse, coal and lumber yard, commencing at the east end of the vertical wall, already built, the sum of three hundred and thirteen dollars.'

The first of these items has been expended since the bill was drawn, and the sum mentioned in the other has been nearly expended.

Section 3 of this bill reappropriates the balance remaining unexpended June 11, 1875, of $579,164.72, appropriated by chapter 708 of the Laws of 1873, for the payment of canal awards, and for other purposes, to the payment of the principal and interest of such awards or such sums as may be awarded in lieu thereof, upon an appeal or rehearing.

This balance is stated at $40,909.20, and is not, as might be supposed, the balance of the original appropriation after deducting the sums paid thereout, but is made up of the aggregate of the original unpaid awards, with the interest upon each for two years. The sum necessary to meet unpaid awards is therefore estimated somewhat arbitrarily, but as it cannot be known whether the awards will be increased or decreased upon an appeal or rehearing, there may be no better system.

Section 4 of the bill reappropriates the balance of $413,755.51, appropriated by chapter 643 of the Laws of 1873, being the sum of $61,955.16, to the following purposes:

1. For work done in Oneida Lake Canal prior to May 29, 1873, $16,769.38.

2. To pay awards made in 1870 and 1871, or such sums as may be awarded in lieu thereof upon appeal or rehearing, $45,185.78.

The first of these items is for the work mentioned in item No. 22 of section 2.

The second item is made up in the same manner as the sum appropriated by the last section.

Section 5 reappropriates $30,000 originally appropriated for work on the Genesee Valley Canal, but remaining unexpended, to pay the balance of the expense of doubling the locks in the Western Division of the Erie canal.

GENERAL CONSIDERATIONS ON THE REAPPROPRIATION BILL FOR EXTRAORDINARY WORK AND REPAIRS ON THE CANALS.

1. This bill consists of forty-three items. It originally passed in a few general clauses. The Governor objected that the Constitution requires that the objects and amounts should be specified; that the appropriations having been once made in detail, they could not be grouped in masses in a re-appropriation. He referred to the following provision of the Constitution:

'No moneys shall ever be paid out of the treasury of this State, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made within two years next after the passage of such appropriation act; and *every* such law making a new appropriation, or *continuing or reviving an appropriation,* shall *distinctly specify the sum appropriated,* and *the object to which it is to be applied;* and it shall *not* be sufficient for such law to *refer* to any other law to fix such sum.'—Constitution, sec. 8 of art. 7.

He also referred to the amendment adopted in 1874, which requires the Governor to act separately on each item of appropriation bills, which would be defeated by grouping numerous items together.[t]

The bill was recalled by a joint resolution of the two houses, and passed in its present form.

2. The clause cited of the Constitution requires, after the lapse of two years, a re-enactment of an appropriation as fully as if it had never been made. Its object was to end the system of permanent standing appropriations, which would continue indefinitely, unless repealed by affirmative legislation; and to command a periodical revisal of all appropriations, and an affirmative renewal of such as were to be continued.

It prohibits the revival of an appropriation by a reference to any former act; or the fixing the amount or the object by such a reference. It is designed to recall into the treasury unexpended balances, which would grow to fill the nooks and corners of the public offices charged with expenditures.

The practice of the Legislature and of the departments has for years been in accord with the present bill as originally drawn, and has practically nullified this salutary provision of the Constitution. This most useful protection of the State Treasury should be restored.

3. In acting on these items, it has been impossible to extend the examination into any question concerning the pending contracts, or whether or not there be any public necessity or equitable grounds for interfering with them. The bill operates simply to continue a provision for money for paying for the work now going on, in the event that such payments shall become necessary. It does not adopt or ratify such contracts. The questions in respect to them remain properly to be looked into by the fiscal officer of the State having charge of the canal expenditures. In the limited time which could be allotted to this bill, it was

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[t] Const. 1846, art. 4, § 9, am. 1874.

difficult to carry the investigation as far as it has gone; impossible to carry that investigation any further.

4. The reappropriation act of 1874 (chap. 392, laws of 1874) appropriated in three clauses.

1. Unexpended balance of $2,180,656, appropriated in 1870, and reappropriated in 1872.	$201,855.09
2. Unexpended balance of $1,425,590.88, appropriated in 1872........................	467,299.67
3. Unexpended balance of $1,011,138.42, appropriated in 1870, and reappropriated in 1872, to pay canal awards................	208,224.87
	$877,379.63
Add by chap. 11 of laws of 1874.............	40,000.00
Total reappropriations	$917,379.63
The act of 1875, in 43 items, reappropriates..	$407,844.88
Of which the items objected to amount to....	67,765.69
Balance	$340,079.19

This sum will form no tax or charge on the present year, having been received from the taxes of former years. The result is:

1874	$917,319.63
1875	340,079.19
Diminution of reappropriations.........	$577,240.44
Money reclaimed into the treasury..........	$67,765.69

Excepting the items objected to, the other portions of the bill are approved."

June 21.

Veto of the following items in the supply bill, chapter 634:

> " 'For Charles Simon, for expenses incurred by him, in the case of the contested election for member of Assembly for the Third District of the county of Onondaga, for the year 1874, being a reappropriation of like amount, in the supply bill of 1874 not paid, the sum of two hundred and fifty dollars.'

The claim for which this item makes a new appropriation, was settled in full last year by the payment of $500, fixed by the comptroller, who was authorized to audit the claim, to the amount of $250, in addition to the sum at which it was so audited. There is no ground for reviving any portion of the claim which was thus disposed of by final settlement.

> 'For the Onondaga Salt springs, for a new water wheel at Syracuse pump house, four thousand dollars; for two new large piston pumps at Salina pump house, two thousand five hundred dollars; for two old large piston pumps at Salina pump house, five hundred dollars; for six new deep well pumps for new wells, three thousand dollars; for six new well houses, two thousand and three hundred dollars; for shafting, gearing and trestle for new wells, two thousand five hundred dollars; for new engine house, for Syracuse group of wells, one thousand dollars; for new conduits, two thousand two hundred dollars; for new lathe for boring logs, eleven hundred dollars; for boring tools, for new lathe, three hundred dollars; for shafting and gearing for driving new lathe, five hundred dollars; for twenty-two salt covers, appropriated to make room for new wells, one thousand one hundred dollars; for land required for operating new wells and laying down conduits, two thousand dollars.'

The appropriation for the next fiscal year provides $60,000 'for superintendence, collection, and necessary expenses.'

The sum is probably larger than the entire income to the State from the salt works will be during the same period.

The appropriation last year was $50,000. The net income was about $10,000. This additional appropriation would be applicable to the current year, and would make the expenditures at least $13,000 in excess of the whole income.

The receipts from the salt works for the last five years have been $399,542, and the outlay, $421,722. The balance against the State is over $22,000.

During the last year over 37½ per cent. of the expenses was for salaries.

At the present time the prospects of the salt business are very unfavorable. It is said that of 300 salt blocks not more than 25 are now in operation, and that no new salt has been inspected this season.

Extraordinary outlays, even under the specious guise of improvements, are very unsuitable to the present condition of the interests of the State in these works, and to the general condition of the salt business at the present time.

All requisite repairs, and everything necessary to protect the State property, ought to be paid from the regular annual appropriation. For every such purpose, that fund ought to be ample. Economy ought to be practiced in all expenditures, and retrenchment should be rigorously enforced in current expenses.

No new investments for improvements ought to be made at the expense of the taxpayers of the State, without a better assurance of the future.

So far from venturing into new operations, a thorough investigation ought to be made of the past administration of these works.

> 'For refunding to the county of Wyoming, moneys alleged to have been erroneously paid into the State treasury, two thousand two hundred and seventy-six

> dollars and one cent, if, upon investigation, the Comptroller shall determine that said county is equitably entitled thereto.'

It is at least questionable whether this claim rests on any basis of equity. The facts, as near as they can now be ascertained, are adverse to its allowance. It is quite certain, however, that the allowance of this item would give rise to similar claims to the extent of $115,000 from other counties, which could be claimed with equal justice.

There is no reason why this county should be preferred over any other, or this item sanctioned, unless the whole matter is investigated and all the counties placed upon an equal footing.

> 'For walling and covering with stone the State raceway, leading from the Erie canal to the pump house in the third ward of the City of Syracuse, for the purpose of propelling the public pumps, the sum of twenty thousand dollars, or so much thereof as may be necessary, one half thereof to be expended in the year 1875, and the other half thereof in the year 1876, the work to be done first from Genesee street north to the pump house; and for the construction of a two foot sewer in Clark street and Leavenworth avenue, in the City of Syracuse, opposite lots belonging to the State, in accordance with plans of sewer commission and Common Council of said city, the sum of five thousand three hundred dollars, or so much thereof as may be necessary. Each of said works to be done under the direction and control of the State Engineer and Surveyor, the canal commissioner in charge of the middle division of the canals, and the superintendent of the Onondaga salt springs who are hereby authorized and required to advertise and let the same to the lowest *bona fide* responsible bidder, whose bids shall be balanced, giving adequate security for the faithful per-

> formance of the works. Cast iron conduits may be substituted in said race way in place of the walling and covering with stone, in case the said commission shall find the same can be done as cheaply, and that it will be for the interest of the State so to do. No part of the work shall be contracted for, nor money expended thereon until the State engineer shall certify that the same is necessary, and in his opinion can be completed for the amount hereby appropriated.'

This raceway was rebuilt under the supervision of George Geddes, and he alleges that it was an excellent piece of work, and is in good condition at the present time, having a plank bottom 9 to 10 feet in width, and side walls 2 feet in thickness. The water runs through it at 2½ miles per hour, with no place where it can stagnate or render the locality unhealthy.

A part of the contiguous lands have been sold by the State.

The raceway now serves all the purposes for which it was constructed, and no benefit can accrue to the State from the projected expenditure.

Nor has the State any interest in the construction of the sewer. If one is needed in that locality, it should be built as sewers are in other parts of the State, by the interests benefited.

> 'For refunding to the city of Auburn the amount of the assessment for paving in front of the State armory, thirteen hundred and thirty-six dollars and seven cents, and for building a sewer in front of the State Prison at Auburn, and walks in front of the State armory in said city, eleven hundred and nine dollars and sixty-six cents, to be paid on the draft of the Mayor of said city.'

I assume that a municipality has no jurisdiction to levy an assessment upon property belonging to the State. The city corporation derives all its power from the sovereignty of the State, and I cannot admit that the creature can impose any liability upon the property of its creator. The benefits derived by the locality from the establishment of a State institution, are more than sufficient to counterbalance the burdens imposed by the withdrawal of the property occupied by it from local assessments.

> ' For the Willard Asylum for the Insane, to finish a new group of buildings sufficient to accommodate two hundred additional patients, one hundred thousand dollars, or so much thereof as may be necessary, to be certified by the building superintendent of the asylum.'

The Willard Asylum is one of the most meritorious of the State institutions; but the policy which it seems right and wise to adopt, in regard to outlays for new construction, requires that the appropriation of $100,000 to erect a new group of buildings, should be postponed at least until next year, and perhaps until the year after, when the bounty debt will have been extinguished.

The recent session of the Legislature found the State in the progress of constructing four great State institutions — three asylums for the insane and a reformatory. It might have been supposed, that such an extensive provision for the insane, as is contemplated in these three institutions, could not become necessary on the instant, and that common prudence would have dictated, that one institution should be completed before another was begun. But, unfortunately, not even the sacred influences of charity could save these works from the spirit of legislative log-rolling, or the rapacity of local expenditure.

Two and three-quarter millions of money, raised by taxes, has been actually expended on these four institutions, and about $450,000 raised by taxes and appropriated remains unexpended, and yet no considerable part of these works are made available.

The policy of beginning everything and finishing nothing has prevailed. Construction has been on a scale of costly extravagance.

The following table shows the situation of these institutions as they now stand.

The column which contains the estimated cost of completing the whole building, in each case, was furnished by an intelligent and judicious person, and is the only part of the statement that is a matter, not of certainty, but of opinion.

	Unexpended appropriations.	Total expended until now	Additional to complete an available part.	Total cost of part completed less than half.	Number of patients in part	Cost per head.
Hudson River State Hospital for the Insane........	$152,628 85	$1,293,518 26	$50,000	*$1,496,147 11	300	$4,990
Buffalo State Asylum for the Insane...............	71,205 35	571,352 91	250,000	†892,558 26	150	5,950
Homeopathic Asylum for the Insane at Middletown..	61,619 10	291,915 79	134,000	‡487,534 89	200	2,437
Elmira Reformatory..........................	160,000 00	619,602 56	40,000	§819,602 56	250	3,300

* Less than half buildings. † Three buildings out of 8. ‡ Two buildings out of 5. § About half.

	Additional to complete whole building.	Total cost of entire building.	Number of patients in whole	Cost per head.	Appropriations last year.	Appropriations this year.
Hudson River State Hospital for the Insane..............	$1,700,000	$3,196,147 11	600	$5,167	$148,000	$50,000
Buffalo State Asylum for the Insane....................	2,100,000	2,992,558 26	600	5,000	150,000	150,000
Homeopathic Asylum for the Insane at Middletown........	500,000	987,534 89	600	1,700	166,509 89	123,800
Elmira Reformatory..................................	**300,000 ††200,000	1,319,602 56	500	2,600	300,000	100,000

** Buildings. †† Wall.

The policy adopted by the Chairman of the Committee of Finance of the Senate, and the Chairman of the Committee of Ways and Means of the Assembly, with my concurrence, was to confine the appropriations of the present year to such sums as would make available, and bring into use, the portions of those structures most nearly approaching completion. In the main, the appropriations made by the present bill conform to that plan.

Provision is likewise made in this act, and in another, applying to the three asylums, for a revision of the plans for the future construction authorized, and to secure as much economy as possible in the work.

It is advisable that the appropriations for the completion of the other parts of these institutions — if on careful examination and consideration they are to be completed on their present plans — should be deferred until year after next, when the bounty debt will have been paid, and a further remission of taxes will become possible.

It has been stated by the comptroller, that the cost of former institutions of this nature was but $600 per inmate, and it was estimated by him that in the recent more expensive times, $1,200 per inmate, even 'with enlarged capacities and better conveniences,' ought to be adequate. It is quite clear that an outlay of $5,000 per inmate, for the purpose of providing shelter for the unfortunate objects of public charity, is unreasonable and extravagant. That would be equal to $25,000 for five persons, which compose the average family in this State. How many families of laborious and thrifty producers, can afford to live in a house costing $25,000?

In 1865, less than one-sixtieth of the houses of this State were of stone, and their value was about $10,000 each, or $2,000 for each inmate. Those of brick, which are about one-eighth of the whole number, were valued at $6,000, or $1,200 for each inmate. Those of wood, which are three-fourths of the whole number, were valued at $1,100, or $220 for each inmate.

I deny that there is any sound public policy in erecting palaces for criminals, for paupers, or for the insane. A style of architecture simple, and fitted to the nature of its object, would reconcile artistic taste with justice towards the industrious producers, on whom falls the burden of providing for the unfortunate. Waste in such edifices is not only a wrong to the taxpayers, but by just so much it consumes the fund which the State is able to provide for the objects of its charity.

Nor does the mischief stop with the completion of costly dwellings. The State still has to provide annually for the support of their inmates. By an inevitable association of ideas in men's minds, magnificent homes lead to magnificent current expenditure. The pride of officers and managers, and of local admirers, and the zeal of benevolence, are freely indulged, where they are gratified without expense to those who are swayed by them.

It is to be remembered that, after all, the incidence of taxation is chiefly not upon accumulated wealth, but upon the current earnings of the million who carry on their productive industries in frugal homes. They ought not to be the only class disfavored by the policy of the State; they ought not to be unnecessarily burdened. A governmental selection adverse to those from whom its strength and wealth proceed would reverse the laws, process and results of natural selection.

It is proper to add, in this connection, that communications have been received from gentlemen eminent in literature and science, in social life and public consideration, complaining of the legislative provision attached to the appropriation for the Homeopathic Asylum, at Middletown, by which the management of that institution is revolutionized.

The answer to their suggestions is, that the Governor is not able to see that he has any power under the provision of the Constitution to strike out that clause, or to give to them the redress they seek.

> 'For the Adjutant General, to replace certain property destroyed by fire in the armory at Syracuse on the twenty-fourth of June, eighteen hundred and seventy-three, according to schedule in the hands of the Adjutant General, the items of which are to be audited by him, the sum of one thousand one hundred and seventy-eight dollars and seventy-eight cents, or so much thereof as may be necessary.'

This item — as the Adjutant General states — was inserted without his knowledge or agency. The claims, if they exist at all, rest on a very slender basis.

The appropriation is also subject to the objection that it appropriates the public money before the claims have been audited.[u]

> 'For the establishment of a female department of the Western House of Refuge for juvenile delinquents, as provided by chapter 228 of the Laws of 1875, the sum of seventy-five thousand dollars.'

This sum is already sufficiently appropriated by chapter 228 of the laws of 1875, and ought not to be here repeated.

> 'The Comptroller is hereby authorized to pay to Wheeler H. Bristol, the amount that shall have been audited by the Lieutenant-Governor and Attorney General, pursuant to chapter 299 of the laws of 1875; and the sum of nine thousand one hundred and fifty-nine dollars and seventy-five cents, or so much thereof as may be necessary, is hereby appropriated for that purpose.'

Section 19 of Article III of the Constitution, as amended, declares that: 'The Legislature shall neither audit nor allow any private claim or account against the State, but may appropriate money to pay such claims as shall have been audited and allowed according to law.'

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[u] Const. 1846, art. 3, § 19, added 1874.

It is the better opinion, that the audit of a private claim must precede the appropriation for its payment.

In the present case, a law has been passed providing for an audit of this claim, but no audit seems yet to have been made.

> 'For expenses incurred by the County of Cayuga, on the indictment and trial of Michael Donohue, John Coughlin, Thomas E. Hardy, Patrick Eagan, and Patrick Clifford, for offences committed by them during their confinement in the State Prison in Auburn, the sum of two thousand eight hundred and eight dollars and ninety-eight cents, or so much thereof as may be certified to by the Attorney General.'[22]

It is the rule that the expenses of a criminal trial shall be borne by the county in which the offence was committed, irrespective of the residence of the offender or the occasion which brought him within the county.

On principle, there seems to be no reason why the State should refund to the county of Cayuga the expenses of this trial.

> 'For removing the bar and dredging the channel of Cayuga inlet, to be done under the direction of the Canal Commissioner in charge of the middle division of the State canals, the sum of five thousand dollars, or so much thereof as may be necessary, which work shall be let by contract to the lowest bidder, as now required by law for the advertising and letting of public works.'

There has been already expended, from year to year, several hundred thousand dollars, under the pretence of doing this work, and no perceptible lowering of the water has resulted.

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[22] See 1877, note 21, for the subsequent history of the claim of Cayuga county against the State, *post*, vol. 7, p. 87.

No further expenditure ought to be made for this purpose without a thorough investigation to establish the utility of the work proposed, and the fact that the appropriation will accomplish the object.

It is provided that this expenditure be made by the Canal Commissioner, in the manner of canal contracts; in which view the item would more properly be found in the general provisions for canal work. The State has no motive for introducing either the forms or results of canal work into any other parts of the public service.

> ' For the Auditor, to make his compensation equal to that of last year, the sum of seven hundred and fifty dollars.'

Section 18 of Article III of the Constitution provides that ' The Legislature shall not pass a private or local bill creating, increasing or decreasing fees, percentage or allowances of public officers, during the term for which said officers are elected or appointed.'

GENERAL CONSIDERATIONS IN RESPECT TO THE SUPPLY BILL.

I. *The Appropriation for the New Capitol.*

Of the million provided for this purpose more than $200,000 will be consumed in the payment of arrears now existing in the nature of a floating debt, and less than $800,000 will be applicable to new construction.

It is with reluctance that I assent to this appropriation. Nearly $6,000,000 has already been expended upon this edifice. Although the general plan has been determined, the details have not been worked out with such thoroughness and such certainty, as to afford any guide as to the amount which will probably be required for the completion of the building. If it were an original question, I should have no hesitation in condemning and discarding a work of such unnecessary cost; but it cannot be now abandoned without losing all that has been thus far expended. In deciding on the wisdom of completing it, we are to consider only whether it will be worth the future outlay for its completion. What that cost will be, ought to be ascertained with all the certainty attainable. I doubted whether the work ought not to be suspended until the plans of future construction should be settled, and full assurance had that the annual expenditure should be made usefully in furtherance of those plans. In the meantime, I favored a reduction of this appropriation below the amount adopted by the Legislature.

But provisions for this general object were inserted in the Supply bill. They, perhaps, justify the allowance of this item, especially as the law imposing a tax for raising the money for this purpose will necessarily go into effect, whatever might be done with this appropriation.

II. *Reduction in Taxation This Year.*

The Act to provide ways and means for the support of Government, which imposes upon the people what is called the State tax, provides for the raising of 6 mills for the year beginning on the first of October, 1875, against 7¼ mills imposed by a similar law for the year 1874. The sum to be collected will be $13,015,874.23 imposed by the present Legislature, against $15,727,482.08 imposed by the Legislature of 1874. The reduction in State tax will therefore be $2,711,634.85. The following statement shows the general nature of the objects for which the taxation of the two years was imposed:

STATEMENT OF THE COMPARATIVE TAXATION FOR STATE PURPOSES IN THE FISCAL YEAR.

1874. VALUATION OF REAL AND PERSONAL ESTATES, $2,169,307,873.			1875. SAME VALUATION ASSUMED.				
	Mills.	Producing.		Mills.	Producing.	Increase.	Decrease.
Schools	1¼	$2,711,634 84		1¼	$2,711,634 84		
Bounty debt	2	4,338,615 74		2	4,338,615 74		
General purposes	1⅓x$\frac{69}{100}$	4,189,475 84		1⅜	2,982,798 33		$1,206,677 51
Asylums and reformatories	⅜	813,490 45	Asylums and reformatories, and deficiencies in general fund and other contingent expenses	$\frac{11}{20}$	1,193,119 33	$379,628 88	
CANALS:							
Canal awards	$\frac{7}{32}$	474,536 10		⅕	433,861 57		40,674 53
Floating debt	$\frac{1}{10}$	216,930 79		⅛	271,163 49	54,232 70	
Extraordinary repairs	⅞	1,898,144 39					1,898,144 39
Capitol	½	1,084,653 93		½	1,084,653 93		
Year 1874	7¼	$15,727,482 08		6	$13,015,847 23	$433,861 85	$3,145,496 43
Year 1875	6	13,015,847 23					
Net decrease		$2,711,634 85	Net decrease				$2,711,634 58

III. *Reduction in Appropriation.*

In order to make an effectual and useful reduction of taxes, it is necessary that a corresponding reduction in appropriations and expenditures should be accomplished, and the creation of a deficiency at the end of the year, to be provided for by future taxation, should be prevented.

CHARGES ON THE CANAL REVENUE.

The appropriation for ordinary expenses and ordinary repairs of the canals for the fiscal year beginning October 1st, will be $1,109,150, with a contingent provision of $150,000 for the Upper and Lower Mohawk Aqueducts and the 16 locks. The aggregate is $1,259,150. It is probable that the revenues of the canals, over and above this amount, will not be quite sufficient to pay all the interest on the canal debt, exclusive of contributions to the sinking fund to redeem the principal of that debt, which the Constitution enjoins.

The necessity of keeping down charges on the canal revenues to the lowest practicable amount is quite apparent.

There ought to be no difficulty, under an improved administration, in making the canals self-sustaining, both for ordinary expenses and repairs and for any necessary work hitherto classed as extraordinary repairs. Beyond that, not much can be expected.

The reduction of appropriations for ordinary expenses and repairs, counting the contingent provision of the present year and the provision of last year for deficiencies, is $415,360.

The provision for new work and extraordinary repairs upon the canals, which last year involved an appropriation of about $2,000,000 and a tax of about $1,900,000, has this year been totally discarded.

The re-appropriations of the proceeds of former taxes have fallen from $917,000 last year to $340,000 this year, being a reduction of $577,000. This, however, does not affect the income of the present year, or the result of its expenditures, except in the amount of $67,765 raised by former taxation, which is now reclaimed into the treasury.

The failure of sundry items and bills to receive Executive sanction will reduce the appropriations as follows:

Extraordinary repairs	$365,946
Appropriation on certificates of claims against the U. S. made in behalf of soldiers of the war of 1812	100,000
Appropriation for improving the navigation of the Hudson River	60,000
Items objected to in the supply bill, exclusive of $75,000 for Western House of Refuge	172,169
Sums reclaimed into the treasury by striking out items of reappropriations for extraordinary canal repairs	67,765
Total	$765,880

There is no reason to doubt that, with the reductions made in the legislative bodies and by the refusal of the Executive sanction to items and to bills passed by the Legislature, the expenditures and appropriations ought not to exceed the taxes levied, and the reduction of taxes will be a clear saving to the people.

In the special message of March 18th, 1875, encouragement was held out, that the success of the measures therein proposed, 'will enable the State to remit for the present year, as compared with last, to the boatmen and transporters, from five to six hundred thousand dollars of tolls, and at the same time to give relief to our overburdened taxpayers, in the reduction of taxes, to the extent of more than 1¾ million of dollars.'

It is a subject of just congratulation, that the results indicated will be much more than realized.

The remission of tolls to the extent of five or six hundred thousand dollars, is equivalent to a reduction of taxes to the same amount.

The direct reduction of taxes will be nearly 2¾ millions instead of 1¾ millions, as anticipated.

FUTURE REDUCTION OF TAXATION.

The following table will show the growth of taxation in the 15 years from 1860 to 1874, inclusive:

YEAR.	Aggregate equalized valuation.	Rate of State tax, in mills, on each dollar of valuation.	State tax levied, including school tax.
1860	$1,419,297,520	3 5-6	$5,440,640 48
1861	1,441,767,430	3 7-8	5,586,848 79
1862	1,449,303,948	4 3-4	6,884,193 75
1863	1,454,454,817	5	7,272,274 08
1864	1,500,999,877	5 1-4	7,880,249 35
1865	1,550,879,685	4 53-80	7,230,976 53
1866	1,531,229,636	5 9-16	8,517,464 85
1867	1,664,107,725	7 3-5	12,647,218 71
1868	1,766,089,140	5 4-5	10,243,317 01
1869	1,860,120,770	5 5-8	10,463,179 33
1870	1,967,001,185	7 41-156	14,285,976 55
1871	2,052,537,898	5 79-120	11,613,943 61
1872	2,088,627,445	9 3-8	19,580,882 30
1873	2,129,626,386	6 95-100	14,800,903 38
1874	2,169,307,873	7 1-4	15,727,482 08

The taxation for the present year is 6 mills. There will be no difficulty in reducing the taxation for 1876 to 5½ mills, by several easy retrenchments, and abstaining from any fresh outlays for new construction of insane asylums and reformatories during the year, even if we continue the usual appropriation towards the completion of the capitol.

The year 1877 will be exempted from the instalment for the payment of the bounty debt, which is two mills — producing $4,348,000, and the taxation can be reduced to 3½ mills.

The people of this State are to be congratulated upon the final extinction of the burdens which they have borne in the payment of upwards of $27,000,000 of pretended bounty debt, which, as the Comptroller states in his last report, was ' created nominally to pay off bounties to volunteer soldiers who enlisted in the military service of the U. S. during the rebellion, but of which only an inconsiderable part reached the soldiers who were actually engaged in the contest.'

After the payment of that debt, and in the levy of 1877, the State taxes can be reduced to 3½ mills, even if an appropriation of half a mill should be continued for the new capitol. That will be one-third of a mill less than the taxation of 1860.

With a reformation in the State Prison systems and expenditures, and in other parts of the public service, there will still be a margin for further reduction; and, on the completion of the outlay for the new capitol, taxation for State purposes can exhibit a complete return to the ante-war condition.

Retrenchment and reform will then find little scope for their exercise, except in the vast domain of municipal taxation, embracing the expenditures of counties, towns and cities, and in the still vaster field of expenditures by the Federal Government raised by various forms of indirect taxation, which collect from the people of this State an aggregate sum larger than the whole amount of State, county, town and city taxes.

In dismissing the discussion of this bill, it is proper to say that it contains 182 separate items; that the reappropriation bill contains 43 and the extraordinary repair bill 41, making in all 266 distinct items. Many of them were of a nature to require an investigation of much intricacy, detail and labor. For the first time — under the recent amendments to the Constitution[v] — it became the duty of the Governor, to act upon them separately, with such knowledge as he could gather for the purpose, instead of signing the aggregate bills as a matter of course, which has been the uniform practice hitherto.

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[v] Const. 1846, art. 4, § 9, am. 1874.

The Legislature, at its adjournment, left 250 bills, some of them long and complicated, many of them involving vehement controversies, and not a few — imperfect in construction but for good objects, which made it an uncertain choice of evils whether to sanction or reject them.

Hitherto, the residue of the year, usually extending to eight months, has been allowed for the comparatively small work imposed on the Executive.

This year, for the first time, the period during which action must be had upon all these bills and all these items, is limited to 30 days after the adjournment of the legislature[w]—a period which would have been more than consumed by the hearings applied for in controverted cases, by interviews and by the reading of papers submitted.

I cannot hope to have always escaped errors of information or of judgment; but I have endeavored in so completely novel a situation, to set no bad precedent for my successors.

Not unmindful of the equities of individuals, I have done the best I could for the State.

The items hereinbefore specified are objected to; the other portions of this bill are approved."

June 21.

Veto of Assembly bill entitled "An act to authorize the construction of work upon the canals of this State."

" This bill was originally entitled, 'An act to authorize a tax of three-fifths of a mill per dollar of valuation of the year one thousand eight hundred and seventy-five, for the construction of new work upon and extraordinary repairs of the canals of this State.

Not only was the title changed, but everything of the original bill, except the enacting clause, was stricken out and the provisions of the present bill substituted.

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[w] Const. 1846, art. 4, § 9, am. 1874.

As it now stands, the bill provides for the expenditure of forty-one different sums of money, for the objects and purposes in the several items specified.

It commands that those payments shall be made 'out of the gross receipts of the canals for the fiscal year commencing October 1, 1875.' No other means of payment are provided. The clause imposing a tax is omitted.

This revolution in the structure, nature and effect of the bill has given rise to difficulties evidently not contemplated by its framers.

All the items of expenditure are either for objects known in our canal legislation as ordinary repairs, or for objects known as extraordinary repairs, including payments for past work.

UNNECESSARY AS ORDINARY REPAIRS.

The items for ordinary repairs are unnecessary. The Appropriation Bill for those purposes provides $1,259,150.

It had been cut down to $1,109,150. A separate item of $150,000 was added —'a further sum' as the bill states, 'or so much thereof as may be necessary, for retrunking the upper and lower Mohawk Aqueduct, and concreting and otherwise repairing the sixteen locks in the Eastern Division of the Erie canal.'

I obtained the best information I could as to this proposed work, and came to the conclusion that a much smaller expenditure, which could be made out of ordinary repairs, would be sufficient for the present; but the Commissioner felt so much anxiety in respect to these important structures, and I had such reliance on his prudence and economy in using only so much of the fund provided as should be necessary, that I yielded my judgment to his wishes, and abstained from striking out this item.

It left the ordinary repair bill larger in amount than, in my opinion, would be sufficient, if wisely and faithfully expended, to keep the canals in good condition, and even to increase their efficiency for the fiscal year from October 1st, 1875, to September 30th, 1876.

I do not think, therefore, that the outlay for ordinary repairs ought to be extended by a second bill for the purposes amply provided for in the first bill. My views on this subject were expressed in the following passage of the Special Message of March 18, 1875:

'In respect to ordinary expenses and repairs to the canals which are to be retained as the property of the State, I recur to the suggestion which I had the honor to submit in the annual message:

'Ordinary repairs should be scrutinized with a view to retrenching their cost, and to obtaining the largest possible results from the outlay.

'In the present state of prices of materials and the wages of labor if the public officers can be inspired with a resolute purpose to make every expenditure for these objects effective, there ought to be no difficulty in reducing the appropriations from one-quarter to one-third below the amount provided for last year.

'The present standard of repair and efficiency must be fully maintained.

'Everything of good administration consists in the selection of the most necessary and useful objects of expenditure, and in securing the greatest effectiveness in the application of labor and the most advantageous purchase of materials.

'If a determination to accomplish this result, and a sense of accountability can be diffused throughout the agents employed in the public service, this object will be easily and certainly attained.'

There is not the least risk of harm to the interests of the State, even if any extraordinary emergency should happen requiring a larger provision for ordinary repairs. The expenditures under these appropriations do not begin until October 1st. They include but two months of navigation, out of the seven, which form the fiscal year. On the opening of the canals in May, 1876, according to the usual experience, about one-half of the provision for the ordinary repairs will remain unexpended. In the meantime, another Session of the Legislature will have been held for at least four months; and there will have been ample opportunity to provide for any contingency now unforeseen.

UNCONSTITUTIONAL AS EXTRAORDINARY REPAIRS.

The items which are in the nature of extraordinary repairs, and the few other items which provide for the payment of money to individuals, are subject to a more grave and an insurmountable objection. They are, in terms, a plain violation of the Constitution. They are in direct conflict with its provisions for the sinking funds to pay the canal debts, and would be a breach of the faith of the State.

The Constitution (Article VII), after providing for ' the expenses of collection, superintendence, and ordinary repairs,' appropriates the revenues of the canals,— to the amount limited,— to the sinking funds created by that instrument. It admits, in priority ' collection, superintendence, and ordinary repairs.' It excludes extraordinary repairs. It excludes all payments for any other than the specified objects.

It may be suggested that this bill should be construed, as if it had read that these payments shall be made out of any surplus that may exist of ' the gross revenues of the canals,' after the payments into the sinking fund shall have been made.

ILLUSORY.

The answers to this suggestion are:

First. The bill would then be completely illusory and deceptive, and would lead to mischiefs to the private parties depending on it, and to the State. It is not within the range of possibility that the canal revenues for the fiscal year

1875–6 shall be equal to the legislative appropriations for collection, superintendence and ordinary repairs, and the constitutional appropriations for the sinking funds.

There will be no surplus out of which any payments can be made. All provisions contemplating such surplus will be a mere sham.

Such a device is objectionable in every aspect. It tends to induce private parties interested in the expenditures to press them in indirect and illegal forms, to obtain advances from innocent parties on the pretended obligations of the State, and will be fruitful of future claims for indemnity. It tends to induce the public officers to aid in illegal expenditures, not on a special public emergency, but as an ordinary practice; and to create a *quasi* debt against the State where the Constitution expressly prohibits even the Legislature from authorizing any real debt.

Secondly. The language of the bill clearly contradicts any such construction. The payments are directed to be made 'out of the gross receipts of the canals.' They authorize the money to be taken for their payments before the payments into the sinking funds. They exclude any idea of waiting for a surplus.

VOID.

The Canal Auditor would undoubtedly refuse to make these payments according to the terms of the bill. But the Legislature ought not to create a necessity for him to import into the bill language which they have not chosen to put there, or to require him to make payments which the Constitution forbids.[x]

It ought not to enact as a law what, by its manifest import, is a violation of the fundamental law.

The Constitution of 1846 had its origin in the purpose of the people to limit the creation of State debts. In whatever other particulars it may have failed to answer the objects of good government, the infinite value of its restraints on the creation of debts during the last fifteen years cannot be questioned.

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[x] Const. 1846, art. 7, § 12.

Except for these restraints, we should now, in all human probability, be groaning under the burden of some hundreds of millions of State debts.

Extreme ingenuity has been employed in circumventing those restraints. In many smaller particulars, the scheme of the Constitution has been defeated. But in the main, it has stood a shield of protection and safety to the people. As far as can be done, step by step,—we must restore the rightful operation of these beneficent provisions. We must stand by the true interpretation of their meaning. We must obey them in spirit as well as in letter. We must discard all false practices which have overgrown the true system of sound finance established by the Constitution.

OBSTACLES TO REFORM.

The practical difficulties of giving effect to a reform in the system of canal appropriations and canal expenditures, are very great. The existing practices are the growth of many years. Numerous contracts for all kinds of work, on every part of the nine hundred miles of canal, were in existence, and were in every stage of progress. Many forms of liability existed for work partially done, on which certificates had been issued. Claims for damages were in every condition, from their origin to the awards by the State officers and appeals therefrom. The habit had grown up, both on the part of those who represent the State and those who deal with the State, of paying very little attention to the Constitution or the laws, in the contracts which are made and in the doing of work. Modes of obtaining money, where work has been sanctioned by some act of the Legislature or some act of public officers, without any appropriation or without sufficient appropriation to pay for it, had become customary. Notwithstanding that the Constitution prohibits the legislative power from contracting any debt, except in the specific mode provided, by submission to a vote of the people,[y] it has become usual to issue certificates for work, outside of all appropriations or lawful means of payment, as if these certificates could create an obligation on the part of the State. It had become usual to do so in many cases, where no public officer had any authority to create such an obligation; and these certificates were habitually accepted by banks and private parties, as the basis of loans of money, or were purchased as investments.

The clause of the Constitution which provides for elasticity in the finance system, to the extent of one million of dollars, ' to meet casual deficits or failures in revenues, or for expenses not provided for;'[z] and which was intended to be used in emergencies, and to be replaced immediately afterward, was speedily exhausted by permanent loans. Every sort of device has been since resorted to to supply the defect.

To change the existing systems — to cut off the fungus growth of unconstitutional and illegal,— of loose and improvident practices, without impairing the efficiency of public works, and without unnecessary harshness to individuals — was a matter of great difficulty. To make investigations in particular cases, so thorough and so conclusive, that they could be the basis of action in reference to existing contracts, or work partially completed, was impossible before the legislation proposed must necessarily be acted on.

Of the bills that have come before me for action, several deserve some mention.

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[y] Const. 1846, art. 7, § 12.

[z] Const. 1846, art. 7, § 10.

I. *The Tax and Appropriation for the Payment of Principal and Interest of the Canal Debt.*

The bill for this purpose, as prepared by the fiscal officers of the State, and enacted by the Senate and Assembly, received my signature.

II. *Tax to Pay the Floating Canal Debt.*

This provision in the law imposing the State taxes, was for a debt existing as early as 1859, which will be extinguished during the present year. The tax for that purpose in 1874 was one-tenth of a mill, or $216,930.79. The tax for the same purpose for this present year is one-eighth of a mill, or $271,163.49. The increase is $54,239.70.

III. *Canal Awards and Certificates of Indebtedness.*

This act is chap. 263, and is entitled 'An act to authorize a tax of one-fifth of a mill per dollar of valuation for the payment of awards of the canal appraisers, of the canal board and of the board of canal commissioners, and to pay the certificates of indebtedness and interest now outstanding.' It is substantially the same as chap. 462, of the laws of 1874, and bears the same title. In the main, both of these bills provide for the payment, as they become payable, of the awards of the canal appraisers, or other canal officers specially charged with the duties of making awards. The canal appraisers usually issue certificates for the awards made by them in a semi-negotiable form. They are the agents of the State, and form the tribunal instituted by the State for the decision of the controversies submitted to them.

Notwithstanding the great suspicion that has attended cases in which such awards are made, it was obviously impossible for me, during the ten days in which the bill was in my hands, with the best help I could obtain, and probably it would be impossible in a longer time, to get information, which would justify me in attempting to retry these cases, which had been adjudicated by the lawful tribunal, or would justify me in vetoing a bill providing the means to pay these awards next year, if, in the meantime, no grounds should appear for withholding or resisting such payments.

These bills contain another item which is the result of a practice very objectionable. About one-fourth of the funds provided by the act of the present year, is for the payment of certificates outstanding in a semi-negotiable form, for work done in excess of the appropriations for the payment of such work.

The appropriation bills of 1874 and several years previous, under which this work was done and these certificates issued, contain an express prohibition of the letting of contracts for any amount beyond the appropriation. The provision is in the following words: 'No more money shall be expended on the works hereinbefore enumerated than is above appropriated; and it shall not be lawful for officers having in charge the execution of the said works, to make any contracts whereby any expenditure in excess of the appropriation will be incurred, or any further appropriation for the same rendered necessary.'

Notwithstanding these prohibitions, the public officers go on with work in excess of appropriation; and every year a bill is introduced into the Legislature, providing for the payment of certificates of indebtedness, assumed to be issued in behalf of the State for work done in excess of any appropriation, and expressly prohibited by the appropriation acts. And the public have been in the habit of accepting these certificates, as if they were regular and legitimate issues of obligations of the State. Banks advance money on them, and private parties purchase them and hold them as investments.

The State, doubtless, by the exercise of its legislative power, has authority — which no municipal or other inferior officer would have — to provide for the payment of such certificates, on its general view of equity applicable to the case.

Indeed, as the State has that quality of sovereignty that makes it incapable of being sued, it can be under no obligation except that of an equitable nature.

While it may be admitted that a special case may sometimes occur, in which the public good may require an expenditure to be made outside of the laws, in the confidence that the State will afterwards legalize, protect and pay it — the existence of a common practice, an established habit, by which the public officers transcend their powers, disregard the salutary restrictions of the laws and the Constitution, and issue pretended obligations of the State, cannot but be regarded as extremely objectionable.

It was quite impossible, while this bill was pending before me, to inquire into the equities, attaching to such certificates in their origin, or in their transfer, as they passed to the pledgees or to the new owners in the course of business. I therefore, not without some reluctance at any sanction of such a system, and not without much distrust of awards of which I saw no means of resisting the payment, allowed this bill to become a law. If investigation shall disclose anything to enable the State to withhold payment in such cases, that defense will be equally available, until the tax shall be collected next year and payments actually made.

The Canal Auditor, while advising the sanction of this bill, assured me that he should be vigilant to avail himself of any just ground of protecting the State from wrong in the premises.

My conclusion, therefore, was to content myself with calling the attention of the public officers to the impropriety, as well as the illegality, of such a system, and to exert whatever influence I have against its continuance.

Such appropriations ought not hereafter to be allowed, unless in cases where there can be a clear excuse for an expenditure not provided for by law in some actual public necessity, and where it can be affirmatively shown that the State received a full consideration, and is under a clear obligation of equity to make provision for a payment which it had not previously authorized.

The tax and appropriation in the present year for canal awards and certificates of indebtedness is one-fifth of a mill, or $433,861.57, against a tax and appropriation for the same purpose last year of 7/32 of a mill, or $474,536.09. The reduction is $40,674.52.

IV. *The Re-Appropriation Bill.*

The re-appropriation bill is fully discussed in the memorandum appended to it. That bill re-appropriates, after the items stricken out are deducted $340,079.19, against $917,319.63 re-appropriated last year. The diminution of re-appropriations is $577,240.44.

The amount raised by former taxes now reclaimed into the treasury is $67,765.69.

V. *Appropriations for Expenses, Collection, Superintendence and Ordinary Repairs.*

This bill (chap. 260, laws of 1875) passed the Assembly and Canal committee of the Senate, with but a trifling reduction from the appropriations of last year, exclusive of the $250,000, provided last year as a separate item for deficiencies.

The budget for extraordinary repairs as originally prepared proposed an expenditure of $1,400,000. In the ordinary course of things, the additions which would have been made to it during its passage through the two houses, by the friends of local objects able to influence those bodies, would probably have swollen it to as great a magnitude as the bill of last year for the same purposes, which amounted in tax to nearly $1,900,000, and in appropriation to nearly two millions.

It was in this condition of things, when the routine, which had become so firmly established, was likely to bring for my action bills which could not be totally rejected, and perhaps could not be effectually altered, and which would practically continue the existing systems of canal expenditure, against which I had objected in my annual message, and invoked retrenchment and reform, that I felt it my duty to enter upon the investigation, which resulted in the special message of March 18th, 1875.

The discussion which ensued generated a spirit in the legislative bodies, and among the people, that triumphed over and broke up the routine, hitherto dominating, and which, like an enchanted ship, moving onward in its course without a crew, was drifting us into a repetition of all the improvidences, abuses and frauds so long infesting this department of the public administration.

The results of this discussion will be found in a reduction of the appropriations for expenses, collection, superintendence and ordinary repairs, and in the extinction of expenditures for extraordinary repairs.

The appropriation for expenses of collection, superintendence and ordinary repairs for the present year will be $1,109,150, and $150,000 for the upper and lower Mohawk aqueducts and the sixteen locks, against $1,424,510 for the same objects last year, besides $250,000 for deficiencies.

The reduction will be $415,360.

VI. *Appropriations for Extraordinary Repairs of Canals.*

This bill, by the revolution which it had undergone before its passage, and the consequent rejection of it from executive sanction will, in its final disposition, allow a saving to the State of nearly two millions of dollars.

No retrenchment could possibly be so satisfactory.

I am convinced that, of the eleven millions of outlay levied by taxes for extraordinary repairs during the last five years, very little has resulted in any practical utility to the State — in my judgment not over one-third; probably not more than one-fourth — very possibly less than that proportion of this enormous sum.

I do not mean that so large a share of this expenditure has been realized as plunder by those dealing with the State. It has often happened, that jobs practically useless to the State have been contrived and lobbied through the Legislature, in order to furnish fat contracts with liberal profits, where the money expended and the work performed were a waste by the State far larger than the profit realized by the contractors. In regard to a very large share of such work, what was not stolen was wasted, and what was not wasted was stolen.

It cannot but be gratifying that in rescuing to the taxpayers of the State such enormous sums, we abandon or lose no real utility; we withhold no expenditure that will hereafter need to be made; we abstain from nothing that can conduce to the prosperity of our people or to their happiness. We merely pluck up by the roots the noxious growth of peculation, fraud and wrong.

I had caused to be carefully examined the forty-one several items of expenditure, for which this bill provided, when it came to me for signature, and had resolved to object to more than half the amount appropriated, even if I should conclude to let any part of the bill stand. A larger examination and more reflection, however, brought me to the conclusion, that it was a duty I owed the people of this State to refuse my approval to the entire bill.

There are items in it which I would be content to allow, if the bill had provided any mode of lawfully paying for the expenditures which these items involve; but there is nothing, which is equitably due to individuals, that this bill would be effectual to pay; there is nothing proposed therein which is, at the present time, essential to the safe and efficient working of the canals."

June 21.

Veto of Senate bill entitled "An act in relation to police justices in the city of New York."

"Among the acts concerning the administration of justice in the City of New York, that have come before me, are three.

The first provided for the election of an additional criminal judge, with powers similar to those of the city judge, and the appointment of an additional assistant to the District Attorney. It was urged as necessary by the Recorder, City Judge, District Attorney, and others. It was finally assented to, on condition of a retrenchment in the salaries of the existing and other officers, which defrayed the expense of the new officers, and made, in addition thereto, a net saving of $20,500 to the city.

The second was Assembly bill No. 149, in relation to Courts of Record; giving the Sheriff the service of process issued out of Courts of Record, and was understood to operate on cases arising in the Marine Court of the City of New York.

The jurisdiction of the Marine Court, except as to marine causes, and its procedure were originally similar to those of courts of justices of the peace. The marshal was the constable, who served processes in the petty cases arising in that tribunal.

A series of acts have revolutionized the position of the Marine Court. Its jurisdiction was early extended from $50 to $250. In 1872 it was enlarged to $1,000, and by an Act of the present session it was further enlarged to $2,000. It has become a great tribunal, possessing the external characteristics of the Supreme Court, with six judges, a clerk, deputy clerk, twelve assistants, four stenographers, an interpreter, and twelve attendants; and holding general terms, special terms, trial terms in parts, and chambers. It has absorbed a large share of collection cases, and, with the recent enlargement of its jurisdiction to $2,000, will become the great ‘ Common Pleas ’ of the people.

This Court has outgrown the constable. The execution of its process occupies a domain which, in all the other counties of the State, is assigned to the sheriff, and was assigned to him here until his functions were superseded by the change of a justice's court into a great common pleas.

In the controversy which this question produced, were, on the one side, the marshals, many of the attorneys practising in this Court, and others whom their influence could affect; on the other, were the sheriff, most of the judges, many of the lawyers practising in the higher courts and the Bar Association. Among numerous papers submitted was a copy of a resolution adopted by that body at their March meeting as follows:

‘ *Resolved,* That, in the judgment of this association, all process of attachment and replevin, orders of arrest and writs of execution issuing out of Courts of Record of this State or city, and to be executed within the City of New York, except when the Sheriff is a party, should be executed by the Sheriff of the City and County of New York.’

On principle, there would seem to be no reason for creating or maintaining an anomaly in the system already existing throughout the State. If there are abuses in the Sheriff's office, they should be corrected. If the system is wrong, it should be changed. But there is no reason why a homogeneous system should not be maintained. If the Sheriff's office is stripped of its usual functions, the cost of its support will be thrown upon the County. The recent bill enlarging the jurisdiction of the Marine Court, is the consummation of a series of progressive changes, which have revolutionized the character and position of that Court, and by a logical necessity draws after it an application of the general rule as to its processes.

The present bill adds two new police justices to the eleven now existing. The necessity, on public ground, for the measure, is the subject of some difference of opinion, but it cannot be said to have been established. Eight of the ten justices — the office of one being vacant — have made a communication to me, in which they state that the business for the six months ending April 30th, 1875, was nearly fourteen per cent. less than last year; that the Court of Special Sessions can, with the present number of justices, be held daily, if expedient; and that ' any increase in the number of police justices is quite unnecessary, and would serve to create additional expense to be borne by the city without any corresponding benefit.' This communication is accompanied by a statement of the Clerk of the Court of Special Sessions as to the amount and condition of the business of that Court, which seems to confirm the views of the justices.

Nor is the bill commended as forming part of a system, the general operation of which would improve the methods and lessen the excessive expenses of the administration of justice in the City of New York."

June 21.

Veto of Senate bill entitled "An act in relation to the State Prisons and Penitentiaries."

" The first two sections of this Act provide, in substance, that a person sentenced to imprisonment for life, or for a term of 25 years, or upward, who has conducted himself properly in prison, may, at the expiration of 15 years, be discharged by the Governor from actual confinement, and that the residue of the term shall be remitted, unless he is convicted of some other crime, or fails to receive a full pardon within 10 years.

Although the discharge is in the discretion of the Governor, he would, as at present in the case of prisoners confined for shorter terms, ordinarily feel bound by the expression of the legislative will, and uniformly release the prisoner upon receiving from the proper officers a certificate of his good behavior.

While some slight provision is made for the sentence of a convict guilty of crime committed after his discharge, it is evident that such provision would be rarely, if ever, executed; and if executed, that it would be rather as a punishment for the latter offense, than for that of which he was originally convicted. The practical effect of these sections, therefore, would be to reduce the punishment for the offenses, now punishable by imprisonment for life or for 25 years or upward, to imprisonment for 15 years in the case of a convict conducting himself properly in prison.

The object of these provisions is to offer to life convicts the same inducements to good conduct that are held out to other prisoners, and it is thought that their adoption would tend greatly to promote the discipline of the prisons. It may be that this would be the case, and that the enactment of this bill would tend to secure good order among the convicts. But, in my opinion, this anticipated advantage would be much more than counterbalanced by other and graver considerations. To the heinous crimes of murder in the second degree, rape and arson in the first degree, should be attached a punishment proportionate to their enormity. In many other States and countries that punishment is death. Formerly in this State the same dread penalty was exacted. In my judgment, the punishment should not be less than imprisonment for life. In saying this, I try to realize the suffering of a life-long incarceration, but I also consider the nature of these crimes. As a general rule, persons guilty of these offenses are unfit ever again to associate with their fellows. A man who proposes to himself the commission of either of these felonies, should have before him, as an element of his calculations, the prospect of being forever immured within the walls of a prison.

The terror of the law which now deters men capable, through revenge, passion or lust, of committing these crimes, would be greatly lightened by a change which provides for their liberation even at the end of the long period of 15 years.

Even for the sake of promoting good order in the prisons, I cannot assent to an enactment, which tends to lessen the just sense of the atrocity of these crimes, or of the wickedness of those who commit them. In particular cases, where the circumstances will allow, executive clemency may now be exercised, and in this manner only should any proper indulgence be granted."

June 21.

Veto of Assembly bill, entitled "An act to amend chapter 219 of the Laws of 1871, entitled 'An act to provide redress for words imputing unchastity to females.'"

"The second section of this bill declares that every person who, either verbally or by written or printed communication, accuses a female of unchastity, is guilty of a misdemeanor, punishable by a fine not exceeding five hundred dollars, or by imprisonment not exceeding one year, or by both. It contains no qualifying words.

At common law, spoken words are not the occasion of a criminal prosecution. A man may orally charge another with rape or murder, and he is thereby made liable to only a civil action.

In libel, where the defamation is deliberate, in an enduring form, and generally obtains considerable publicity, it is perhaps right that the defamer should be liable to criminal prosecution, although the reason given in the books for such liability,—that the publication tends to produce a breach of the public peace,—is somewhat fanciful. It has, however, been doubted by many jurists whether, on the whole, any good has resulted to the public, or even to the parties immediately concerned, from the trial of an indictment for libel.

Where the defamation is oral, made in words which pass with the breath in which they were uttered, made usually in the heat of discussion or controversy, greatly liable to be misunderstood or misrecollected, I can see no reason for making it a public offense.

If this statutory slander, created by the Act of 1871, is to be made a criminal offense, I can see no reason why slander at common law should not be.

To allow this would foment neighborhood quarrels, encourage litigation, block the courts with trifling causes, and benefit no one, except the class of small lawyers who thrive on this sort of cases.

But there is another objection to this bill, which, with me, is conclusive. It does not permit the person charged with the offense created, setting up in his defense a justification, or of his putting in the plea of a privileged communication. If a father should inform his son of the lewdness of a woman whom the latter was about to marry, neither the truth of the allegation nor the privileged nature of the communication would be a defense to an indictment against him.

If, contrary to the general rule, oral defamation of this particular character is to be made punishable criminally, the prisoner should at least, have all the latitude of defense which is allowed to a defendant upon an indictment for libel at common law.''

June 21.

Veto of Senate bill, entitled "An act to provide for the payment of certain certificates issued to the militia of the State for services in the war of 1812."

''After the law imposing taxes for the support of Government had passed, after all the appropriation bills had passed, after the Supply Bill had gone to the Committee of Conference, and the financial means of the State had become fixed, and two days before the final adjournment of the Legislature, this bill, appropriating $100,000 came into the Executive chamber. The next day another bill, appropriating $60,000, appeared.

The origin of this bill is remarkable. In 1857, by chapter 597 of the Laws of that year, a commission was appointed to ascertain and determine the sums due for contingent expenses of the militia and Indians rendering material services in the war of 1812.

That law provided that, when the amount of these claims should be ascertained, proper measures should be adopted to obtain payment thereof from the Treasury of the United States.

That law also provided that certificates, with the name, residence and amount due of claimants, might be issued, and that, upon such certificates, the Comptroller might endorse the statement that the amount thereof should be paid, as soon as the money should have been received by the Treasurer of this State from the Government of the United States in the satisfaction of such claims.

Chapter 176 of the Laws of 1859 changed the *personnel* of the Commission, but it did not change the nature of the relation which the State bore to the transaction. It provided for a distribution *pro rata* among the claimants of such sum as should be received from the United States.

In 1866 a concurrent resolution was passed by the Legislature, asking Congress to appropriate $877,629 to pay these claims.

Certificates, expressing on their face that their payment was to be made in pursuance of the Act of 1859, were issued.

In 1869 an appropriation of $50,000 was got through the Legislature, for the payment of such certificates.

In 1870 another appropriation of $100,000 was made, and in 1874 a further sum of $100,000.

The Comptroller of the State has communicated to me the information that the addition of this appropriation to the charges now existing against the treasury will create a deficiency in the means for their payment.

The $250,000 which has been appropriated has not sufficed to pay in full the first class of the beneficiaries.

It is estimated that not less than $1,000,000 more would be required completely to satisfy the claims of all the classes of beneficiaries.

It is quite clear that this bill, under such circumstances, ought not to become a law.

June 21.

Veto of Senate bill, entitled "An act to amend an act entitled 'An act to amend chapter 467 of the Laws of 1862, entitled an act to prevent the adulteration of milk, and prevent traffic in impure and unwholesome milk,' passed May 2d, 1864."

"This bill re-enacts section 4 of the Act of 1862, omitting the prohibition of the sale of swill milk. The Board of Health of the City of New York apprehend that it might legalize the dilution of milk by water. It certainly would legalize the sale of milk obtained from cows fed on distillery slops. Protests against such an enactment have been received from the Board of Health of New York, from the Society for the Prevention of Cruelty to Children, from the Society for the Prevention of Cruelty to Animals, and from the Sanitary Superintendent of Brooklyn. Extracts from medical authorities opposed to the use of such milk have been submitted. On the other hand, certificates from eminent chemists favoring such use, and fortifying their opinions by analyses, have also been submitted.

It is enough to say, that a strong and general public judgment adverse to allowing the sale of such milk was formed some years ago, and there is now no reason to suppose that judgment has been changed. The subject was the occasion of an extraordinary excitement among the people of New York and Brooklyn, which was appeased by the enactment of the prohibition now proposed to be repealed. If, in any respect, that legislation can be safely or wisely modified or qualified, the change should be made only after the fullest knowledge by the public — the most ample opportunity for discussion — and the most careful consideration by the authorities having the care of the public health. Nothing of this kind has been done. This bill, if it should become a law, would be a total surprise to the people. It cannot receive the Executive sanction.''

June 21.

Veto of Senate bill, entitled "An act to authorize cities to provide railways for rapid transit of persons and property, and to create corporations for that purpose."

'' Three bills providing for rapid transit were before me on the adjournment of the Legislature.

The one amending the acts relating to the New York Elevated Railroad was carefully considered. In its present form, it is free from the objections alleged against the bill of last year. The apprehension that it might allow of the use of the Boulevards has been removed by provisions inserted in the general law, commonly known as the Husted Bill, and by acts done, or to be done under those provisions. On the whole, the bill seems to be as free from just objections as such a measure is ever likely to be. The road, so far as now constructed, is used with great convenience and advantage by many of our most intelligent citizens, whose opinions, founded on their own experience, have been submitted to me. The bill has been signed in advance of the general bill, in order that its provisions should be controlled by the general law wherever the two are in conflict.

In choosing between the two general bills designed to provide for rapid transit, I have no hesitation in preferring Assembly Bill No. 739, commonly known as the Husted Bill; nor have I any doubt that it is inexpedient to establish two general systems.

It is therefore necessary to disapprove of this bill, independently of the grave objections of a specific nature which exist against it.''

June 21.

Veto of Assembly bills Nos. 186, 247, 488, 489, 607, amending chapter 721 of the Laws of 1871, entitled "An act to amend and consolidate the several acts relating to the preservation of moose, wild deer, birds and fish; No. 312, relating to fishing in Tonawanda Creek in the County of Wyoming; No. 640, relating to fishing in the waters of Clinton County, except Lake Champlain; and No. 718, relating to fishing in the Niagara River within the County of Erie."

''Although a general law was passed so late as 1871, regulating the killing of game and the taking of fish, the whole subject is now in the greatest confusion, owing to the numerous and ill considered acts which have since been enacted.

The act passed at the late session, extending the powers of boards of supervisors, confers upon these boards the power of regulating these subjects within their respective counties. It may be desirable that, where a body of water is situated in more than one county, the legislature of the State should prescribe the regulations for fishing therein. No one of the bills now before me is, however, confined in its operation to such a case.

The belief that the power is likely to be as well exercised by the boards of supervisors, as by the legislature of the State, is strengthened by the fact, that four of these bills prescribe the rules for fishing in Oneida Lake, each in a manner different from the other, so that if they were all signed, the gentle fisherman would have to inquire which was signed last, in order to ascertain by what rule to govern his conduct.''

June 21.

Veto of Assembly bill, entitled "An act to regulate the use of the Dock or Pier at the foot of Jersey Street, in the village of New Brighton, in Richmond County."

" The North Shore Staten Island Ferry Company is in possession of the dock or pier mentioned in the title of this bill, under color of title derived from the State, and claims to own the same in fee simple absolute, and to have the right to the exclusive use thereof.

This bill provides that any vessel plying between New York and the north shore of Staten Island may land and receive passengers or freight at such dock, and commands the Police Commissioners to remove any obstructions that may now be, or may hereafter be placed thereon. It also imposes a penalty of two hundred and fifty dollars upon any person who shall maintain or place any obstruction on said dock which shall prevent, or who shall in any way prevent, the landing of passengers or freight at such dock from any such vessel.

The promoters of this bill allege that this dock is subject to public use, but I have been furnished with no facts substantiating that allegation. If it is true, the public have a plain remedy through the courts, and they should resort to the courts in the assertion of their rights. The Legislature ought not to be asked to determine what is purely a judicial question.

Legislative adjudication in respect to private rights is worse than judicial legislation in respect to public matters."

June 21.

Veto of Assembly bill, entitled "An act supplemental to chapter 319 of the Laws of 1848, entitled 'An act for the incorporation of benevolent, charitable, scientific and missionary societies,' and the several acts amendatory thereof."

" The Act of 1848, as its title implies, is a general act for the incorporation of benevolent, charitable, scientific and missionary societies, and its provisions have, by several amendatory acts, been extended, so as to include corporations for various other purposes.

By this bill, any two or more of such corporations are authorized to consolidate themselves.

Thus a benevolent society may consolidate with a scientific society, or a missionary society with a charitable society. The members of one society, by becoming members of another, in sufficient numbers to control its organization, may absorb the property and franchises of the latter, and thus frustrate the purposes of those who have contributed to its support.

It is the evident intent of the Act of 1848, that a corporation formed thereunder shall exercise the functions of only one of the classes of corporations therein provided for. This bill allows the existence of a corporation, having for its objects all the purposes for which any of the numerous classes of corporations provided for in the Act of 1848, and the acts amendatory thereof, may be formed to promote.''

June 21.

Veto of Assembly bill, entitled "An act for the improvement of the navigation of the Hudson River and Catskill Creek, and to make an appropriation therefor."

'' This bill came to the Executive chamber the day before the final adjournment of the Legislature. The law imposing taxes for the support of the government had passed; the appropriation bills had passed; the Supply Bill had gone to a committee of conference; the financial means of the State to meet expenditures had become absolutely fixed.

Any expenditure not contemplated at the time of the passage of the Tax Bill was necessarily unprovided for; and would either not be met, or would create a deficiency.

A communication was subsequently received from the Comptroller of the State, in which he advised me as follows: 'I am informed that the Old Soldiers' Bill (war of 1812), and the Hudson River Appropriation Bill were both passed after the Tax Levy Bill was passed, and if such is the case, there will be no money in the treasury to meet them.' I was further warned that such additions had been made to the Supply bill, that unless they should be reduced, the provisions to meet them would be insufficient.

No duty is more clear or more imperative than that of keeping the expenditures within the means provided. The Constitution has prohibited the creation of a debt in any other mode than the one prescribed. A floating debt produced in the practical operation of the Government by recklessness as to the methods by which the two ends can be made to meet is bad financiering, is a deceptive system, a disregard of official duty, and a violation of the Constitution.[aa]

Aside from these considerations, which are in themselves conclusive, it would seem to be wise that the means taken to improve the navigation of the Hudson River, which is an object of just public interest, should be carefully considered, and the plans adopted should be such as are certain to secure the accomplishment of the object. The plans should be made in reference to the improvements being carried on for the same purpose by the Government of the United States.

On the whole, considering that the present bill would either be futile, or would lead to the objectionable consequences pointed out, the subject may be wisely left to the more mature consideration of the next Legislature."

June 21. In addition to the foregoing bills, which received special executive attention, twenty other bills remained in the Governor's hands at the expiration of the thirty day period, and were marked not approved. By the Constitutional provision adopted in 1874, which took effect in 1875 (article 4, sec. 9), a bill remaining in the Governor's hands on the adjournment of the Legislature could not become a law unless actually approved by him during the thirty day period; hence his failure to approve bills during this period became equivalent to an actual veto. This general and final disposition of bills remaining unapproved at the close of the thirty day period, received the name of the "omnibus" veto, and a formal list of such bills with their titles has usually been made at the close of the thirty day period, and signed by the Governor. In 1875 the omnibus veto included the following bills:

[aa] Const. 1846, art. 7, § 12.

Senate Bill No. 230. An Act to provide for the building of a town house or hall in the town of Fort Covington, in the County of Franklin.

Senate Bill No. 131. An Act to extend the operation and effect of the Act passed February 17, 1848, entitled "An Act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes."

Assembly Bill No. 519. An Act to provide for the payment for the use and occupation of armories and drill-rooms in the City and County of New York.

Assembly Bill No. 538. An Act to amend an Act entitled "An Act to amend the Act for the protection and improvement of the Seneca Indians residing in the Cattaraugus and Alleghany reservations in this State," passed November 15, 1847.

Assembly Bill No. 734. An Act to authorize the Coroners of the County of New York to employ a stenographer in certain cases.

Assembly Bill No. 613. An Act to incorporate the Bethlehem Mutual Insurance Association and for other purposes.

Senate Bill No. 228. An Act to extend the operation and effect of the Act passed February 17, 1848, entitled "An Act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes."

Assembly Bill No. 271. An Act supplementary to an Act entitled "An Act to incorporate the Manhattan Loan and Trust Company of the City of New York," passed June 26, 1873.

Assembly Bill No. 709. An Act to regulate pilotage for the Port of New York.

Assembly Bill No. 404. An Act to amend an Act entitled "An Act to re-enact and amend an Act entitled 'An Act to provide for the annexation of the Towns of Morrisania, West Farms and Kings Bridge, in the County of Westchester, to the City and County of New York," passed May 6, 1874.

Assembly Bill No. 724. An Act to amend an Act entitled "An Act for the preservation of fish in the River St. Lawrence," passed June 12, 1873.

Assembly Bill No. 78. An Act to provide for the payment of an award due from the City of Brooklyn to the Brooklyn Park Commissioners for lands taken from Prospect Park for reservoir purposes.

Assembly Bill No. 432. An Act relating to Armories in the City of New York.

Assembly Bill No. 606. An Act to establish a Board of Fire Commissioners for the Village of West Troy, in the county of Albany.

Assembly Bill No. 47. An Act in relation to Railroad Commissioners in the several counties of the State.

Assembly Bill No. 741. An Act to provide for the recording of certain decrees in partition suits in the clerks' office of certain counties of this State, and for the alphabetical indexing of the names of the grantors of deeds, mortgages and other instruments recorded and to be recorded in said clerks' offices.

Assembly Bill No. 235. An Act to amend the charter of the city of Brooklyn.

Assembly Bill No. 587. An Act supplementary to "An Act in relation to storage and the keeping of combustible material in the City of New York, the use and control of the Fire Alarm Telegraph, the incumbrance of hydrants and other purposes connected with the prevention and extinguishment of fires therein, and imposing certain powers and duties upon the Board of Fire Commissioners of the said city," passed April 26, 1871.

Assembly Bill No. 672. An Act to amend Chapter 379 of the Laws of 1848, entitled "An Act to simplify and abridge the practice and proceedings of the Courts of this State.'"

Assembly Bill No. 256. An Act to amend Chapter 134 of the Laws of 1851, entitled "An act in relation to weights and measures."

1876. JANUARY 4. LEGISLATURE, NINETY-NINTH SESSION.

SAMUEL J. TILDEN, Governor.

ANNUAL MESSAGE.

STATE OF NEW YORK:

EXECUTIVE CHAMBER,
ALBANY, *January 4th,* 1876.

To THE LEGISLATURE.— The annual meeting of the legislative assemblies, at the beginning of the new year, finds the people of this commonwealth in the enjoyment of blessings, which ought to fill us with reverent thankfulness to Him from whom cometh every good and perfect gift. Whatever the earth could yield to the labor of man, under the fructifying and genial forces of nature, we have garnered. Health, peace and domestic tranquillity have been ours. Capacities to produce in largest abundance and with least sacrifice, or to acquire by exchange through the best natural and artificial machinery of transport and travel, all things which minister to material well-being, to the prosperity and wealth of a State, and to the comfort and felicity of its individual members, have been, and are subject to our use.

It was early discovered that New York possessed within her territory the natural passes of military operations, which, in the wars for colonial existence and for national independence, cross tracked our soil with fire and blood. Our territory was also found, on the later development of the national growth, to occupy the natural thoroughfares of travel and traffic. It touches the ocean with a harbor ever open, accessible and safe, close by whose gates the ocean currents compel to pass nearly all transatlantic navigation to and from this country. It connects that harbor and the tranquil Hudson on the north, with Lake Champlain and the Canadas; and on the west, by a level crossing the bases of the mountain ranges that traverse the continent, with Lake Erie and its chain of great inland seas, bordered by rising commonwealths, which are the marvels of modern times.

We are, with our fellow-citizens of the other States, joint inheritors of a system of government — the selected product of the oldest existing civilization — formed according to the best ideals evolved from human experience, but freed from the overgrowth of habits and interests elsewhere incident to such experience; and planted in the virgin soil of an unoccupied continent, abounding in all the gifts of nature. Our population, by the census just taken, is near four and three-quarter millions. Our annual product of agriculture is still greater than that of any of our young rivals, whom we contemplate with admiring pride as in part the creations of our policy and the swarming homes of our own children. Our domestic manufactures are larger than those of any other State. Our foreign commerce is once and a half that of all the rest of the Union.

Common schools, in which are taught a million of youths, and seminaries of higher learning, are training our successors to improve on whatever they can inherit from the present generation. Institutions of charity dispense everywhere their benefactions; and the surface of our whole domain is dotted thickly by edifices whose spires point to Heaven.

If, on this fair picture, there are spots that indicate a recent prevalence of private waste or folly, or that disclose evils or wrongs by Government, resulting in much temporary distress, let us remember with humility that we have been in part the authors of what we deplore, or, at least, consenting witnesses; and let us be grateful that we can reform what is amiss; and that, to our hands, under God, is committed our own future.

DEBTS OF THE STATE.

The nominal amount of the debts of the State, as they appear on the books of the Comptroller, without deducting the sinking funds applicable to their payment, on the 30th of September, 1875, the close of the last fiscal year, was $28,328,686.40, classified as follows:

General Fund	$3,119,526.40
Contingent	68,000.00
Canal	10,086,660.00
Bounty	15,054,500.00
	$28,328,686.40

THE SINKING FUNDS.

The amount of those debts, on the 30th of September, 1875, after deducting the assets in the sinking funds at that time applicable to their payment, is exhibited by the following statement, furnished by the Comptroller:

	Debt September 30, 1875.	Sinking fund September 30, 1875.	Balance.
General Fund	$3,119,526 40	$3,029,605 70	$89,920 70
Contingent	68,000 00	36,677 64	31,322 36
Canal	10,086,660 00	1,448,345 51	8,638,314 49
Bounty	15,054,500 00	[*]9,066,753 29	5,987,746 71
Totals	$28,328,686 40	$13,581,382 14	$14,747,304 26

[*] Deducting interest accrued to Oct. 1, 1875, payable Jan. 1, 1876.

The actual reduction, during the year, of the debts by cancellation of matured stocks, and by the purchase of $858,000 of the bounty loan for the sinking fund is $1,870,770.

The diminution, during the year, of the debts, after deducting the assets of the sinking fund, is $2,744,505.06.

THE BOUNTY DEBT.

But even this exhibit does not completely show the situation of the sinking funds as we are to deal with them in the legislation of your present session. The appropriations made at the last session became operative on the 1st of October, 1875. The taxes levied for the fiscal year, beginning on that day, are in process of collection.

The appropriation for the bounty debt sinking fund, was $4,260,000. If that sum be deducted from the balance of $5,987,746.71, as shown in the table for the 30th September, 1875, there would remain but $1,727,746.71 to be provided for by your legislation.

The near approach of the extinction of the bounty debt, suggests a retrospect. If it had been a necessary condition to a restored union, our people would not count its cost. But it was essentially an after-war adjustment, and if the criticism of the Comptroller, in his report of 1875, be just; that though created "nominally to pay bounties to the volunteer soldiers, who enlisted in the service of the United States during the rebellion, but only an inconsiderable part of this sum is believed to have reached the soldiers, who were actually engaged in the contest," the experience would be chiefly useful in illustrating the magnificent costliness of improvident debt. The appropriation for it in the last ten years amounts to $39,983,862.97, and interest would swell the present cost to at least $50,000,000. When the appropriation of the present year shall be added, the people of this State may be congratulated on its extinction.

CANAL DEBT.

The appropriation at the last session for that portion of the canal debt, known as the floating canal debt, was $266,000, which will complete its payment and leave a small surplus in the sinking fund.

On the other hand, the sinking fund for the canal debt proper, will fail to derive from the revenues of the canals, the whole amount of the installment required, and a deficiency of $625,610.70 will have to be supplied.

WHOLE AMOUNT OF DEBTS.

The application of the sums appropriated from taxes, now in process of collection, would reduce the State debts to about ten and one-quarter millions of dollars, exclusive of accruing interest.

Another observation ought to be made in respect to the sinking funds. Nearly twelve hundred thousand dollars of the assets, consist of premiums on its stocks at cost or at present market rates.

It is clear that the operations of the sinking funds should be revised. The best investment, certainly the safest, for a State as for an individual, is in the payment of its own debts, if that be possible on reasonable terms. Individuals seldom find easy credit anything but a snare; States never. A large mass of cash on hand, even if in sinking funds, tempts to improvident expenditure and to illegitimate use.

CONSTITUTIONAL RESTRICTIONS ON PUBLIC DEBTS.

Thirty years ago, in June, the convention sat, which formed our present Constitution. It was called into being chiefly to impose restraints on the power of the government of this State to contract debts. The purpose of the people to establish these guards against their agents was the result of years of animated discussion. The restraints were carefully devised. They have been useful, and, in the main effectual. In 1846 our State debts were nearly twenty-four millions. In 1876 they will be reduced to ten and a quarter millions.

The convention considered plans for applying such restrictions to all municipal bodies and local governing officials. They did not feel able, in the period of their session, to mature satisfactory provisions. They devolved the duty on the Legislature, commanding its performance. Their injunction has been unexecuted; and in 1876 the city of New York has a debt of one hundred and twenty-two millions after deducting its sinking funds, against a debt of less than fourteen millions in 1846. The other cities of the State owe sixty millions, and many counties and towns are also largely burdened.

Sole surviving member of the committee which prepared the constitutional restrictions on the creation of State debts, I might be permitted, in honor of the illustrious dead, to trace the moral, our experience has since proved, of the utility of their work; but I have recounted the results to show that the policy was then, and is now, absolutely necessary to the safety of the people in all State and local governments.[1]

TAXES FOR STATE PURPOSES, IN 1874.

The taxes levied by the Legislature of 1874, were 7¼ mills on a valuation of $2,169,307,873. Their produce, when all realized, is $15,727,482.08.

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[1] A concurrent resolution was adopted proposing an amendment to article 8, section 11, prohibiting a municipal corporation from incurring indebtedness in excess of five per cent. of the assessed value of the real estate therein. An amendment on this subject was finally adopted in 1884, and approved by the people, fixing the limitation at ten per cent., with an exception as to water bonds. The section was further amended in 1894, in 1899 and in 1905, the last two amendments relating to the city of New York. The section was again amended in 1907 by exempting second class cities from the operation of the limitation as to water debts incurred after January 1, 1908.

IN 1875.

The taxes levied by the Legislature in 1875, were 6 mills. They were computed in the Comptroller's office and in the Legislative committees on the valuation of the previous year. On that basis, their produce would have been $13,015,847.24.

THE REDUCTION.

The reduction would have been $2,711,634.84. But the valuation was increased to $2,367,780,102. The produce of a 6 mills tax on that amount is $14,206,680.61. The increase of the valuation gives an excess over the estimated amount of $1,190,833.37. The reduction actually effected is $1,520,801.47.

APPROPRIATIONS OF 1875.

A reduction of taxes, without reduction in appropriations, would but create a deficiency and a floating debt. These would have to be paid by a subsequent increase of taxes. The appropriation bills were framed to correspond with the lower valuation, and much effort was made to keep down the appropriations. The result is shown in the following table:

APPROPRIATIONS AND TAXES OF 1875 COMPARED.

	Mills.	Appropriations of 1875.	Tax computed on valuation of 1874.	Tax computed on valuation of 1875.	Excess.
Schools	1¼	$2,712,000 00	$2,711,634 84	$2,959,725 13	$248,090 29
Bounty debt	2	4,260,000 00	4,338,615 75	4,735,560 20	396,944 45
Capitol	½	1,000,000 00	1,084,653 94	1,183,890 05	99,236 11
Canal floating debt	⅛	266,000 00	271,163 48	295,972 51	24,809 03
Canal awards	⅕	422,766 90	433,861 57	473,556 02	39,694 45
General Purposes	1⅜	2,986,825 00	2,982,798 33	3,255,697 64	272,899 31
Deficiency and Asylums	11/20	1,525,213 53	1,193,119 33	1,302,279 06	109,159 73
		$13,172,805 43	$13,015,847 24	$14,206,680 61	$1,190,833 37

Excess of appropriations over tax, computed on valuation of 1874	$156,958 19
Excess of tax, computed on valuation of 1875, over tax computed on valuation of 1874	1,190,833 37
Excess of tax, computed on valuation of 1875, over appropriations of 1875	1,033,875 18

The reduction in the appropriations of 1875, below the taxes of 1874 — counting, at its true construction, one item about which there may be some doubt — is $2,554,677.65. This leaves the sum of $1,033,875.18 applicable to the reduction of taxes for the coming fiscal year.

REDUCTION OF APPROPRIATIONS FROM CANAL REVENUES OR FUNDS.

The appropriations for ordinary expenses and repairs of the canals made at the last session for the fiscal year beginning October 1, 1875, were $1,109,150, and for the current fiscal year a special contingent provision of $150,000, making $1,259,150. The like appropriations made at the session of 1874, were $1,424,510; and a provision for the then current year for deficiencies of $250,000. The reduction in 1875, as compared with 1874, is $415,360.

The canal re-appropriation bill in 1874 re-appropriated $917,319.63; that of 1875 re-appropriated $340,079.19. The diminution is $577,240.44.

The amount raised by former taxes, re-claimed into the treasury by striking out items in the re-appropriation bill of 1875, is $67,765.69.

ITEMS OF REDUCTION OF TAXES.

The objects in respect to which a reduction of taxes was effected, were:

	1874.	1875.	Reduction
Extraordinary canal repairs............	$1,898,144 39	....	$1,898,144 39
Asylums and reformatory.............	813,490 45	$479,800 00	333,690 45
General purposes....................	4,189,475 84	3,696,117 66	493,358 18
			$2,725,193 02

1. In respect to the first item, the memorandum assigning reasons for withholding the executive sanction from

the bill making appropriations for extraordinary repairs to the canals, contains the following observations:

"The budget for extraordinary repairs, as originally prepared, proposed an expenditure of $1,400,000. In the ordinary course of things the additions, which would have been made to it during its passage through the two houses, by the friends of local objects able to influence those bodies, would probably have swollen it to as great a magnitude as the bill of last year for the same purpose, which amounted in tax to nearly $1,900,000.

"It was in this condition of things, when the routine, which had become so firmly established, was likely to bring for my action, bills which could not be totally rejected, and perhaps, could not be effectually altered, and which would practically continue the existing systems of canal expenditure, against which I had objected in my annual message and invoked retrenchment and reform, that I felt it my duty to enter upon the investigation, which resulted in the special message of March 19th, 1875.

"The discussion which ensued, generated a spirit in the legislative bodies, and among the people, that triumphed over and broke up the routine, hitherto dominating, and which, like an enchanted ship, moving onward in its course without a crew, was drifting us into a repetition of all improvidences, abuses, and frauds, so long infesting this department of the public administration.

"The results of this discussion will be found in a reduction of the appropriations for the expenses of collection, superintendence and ordinary repairs, and in the extinction of expenditures for extraordinary repairs."

2. The reduction in the second item was the result of a policy adopted by the finance committee of the two houses, with my concurrence, of confining the appropriations to such sums as would make available and bring into use the portions most nearly approaching completion of the asylums and reformatory, now in the course of construction.

The appropriations allowed to pass conform, in the main, to that plan.

3. The memorandum assigning reasons for withholding the executive sanction from certain items of the supply bill, expressed the belief that "with the reductions made in the legislative bodies, and by the refusal of the executive sanction to items and bills passed by the legislature, the expenditures and appropriations ought not to exceed the taxes levied, and the reduction of taxes will be a clear saving to the people." It added that "the failure of sundry items and bills to receive the executive sanction will reduce the appropriations as follows:" and it enumerates

such items to be paid by taxes amounting to..	$332,169
And items stricken out which reclaim cash to the treasury	67,765
	$339,934
And items to be paid out of canal revenue....	365,946

The failure to keep the appropriations down to the taxes levied, on former occasions, has led to deficiencies in the treasury and floating debts which are forbidden by the Constitution, and to violations of the sinking funds. We cannot too vigilantly guard against a recurrence of these evils; or insist too inflexibly that no appropriation shall be made until the means of paying it shall have been provided.

REDUCTION OF STATE TAXES FOR 1876 TO ONE-HALF THE TAXES OF 1874.

The taxes for State purposes in 1874, were 7¼ mills on a valuation of $2,169,307,873, producing	$15,727,482.08
The taxes for State purposes in 1876, if reduced to $3\frac{625}{1000}$ mills on the valuation of 1874, or $3\frac{321}{1000}$ mills on the valuation of 1875, which is $2,367,780,102, would yield.	7,863,741.04

After a careful consideration of the elements of the question, I have arrived at the conclusion that a reduction, substantially of this extent, can be effected without detriment to the public interests, if there exist no deficiencies yet undiscovered in the public accounts, and if no extraordinary necessity for new appropriations shall arise.

It may be proper to indicate some of the chief particulars in which this reduction can be made.

1. Payment on debts of the State.			
	Appropriations in 1874.	Necessary in 1876.	
For bounty debt.........	$4,260,000.00	$1,727,746.00	
For canal debt..........	198,888.00	625,610.70	
	$4,458,888.00	$2,353,356.70	
Reduction			$2,105,531.30
2. Canal expenditures.			
	1874.	1876.	
For extraordinary repairs.	$1,898,144.39	None.	
For awards	474,536.10	$172,680.49	
	$2,372,680.49	$172,680.49	
Reduction which, as to canal awards, is estimated...			2,200,000.00
3. Reduction by means of surplus of taxes in 1875..........			1,033,875.18
4. The taxes provided for general purposes in 1875 were less than those of 1874 by....		$493,358.18	
The excess of appropriations over taxes computed on the old valuation, was........		156,958.19	
Balance		$336,399.99	
Counting on the same appropriations this year, there will be a reduction of.....................			336,399.99
5. The tax for new asylums and reformatory in 1874, was		$813,490.45	
The appropriation for 1875, was..........		479,800.00	
Balance		$333,690.45	
If the same appropriations were made in 1876 as in 1874, reduction would be			333,690.45
The reduction effected in these items would be............			$6,009,496.92
In order to effect the diminution of taxes one-half, there would remain to be effected out of the other appropriations a further reduction of			1,854,244.12
The other taxes in 1875, as appropriated, were:			
For new capitol			1,000,000.00
For asylums and reformatory			479,800.00
			$1,479,800.00

Remainder of taxes appropriated for general purposes, 1874	$3,696,117.66
Taxes appropriated for schools, 1874	2,660,000.00
Total	$7,835,917.66
A quarter of that would be	$1,958,979.41
The balance of the reduction proposed, is	$1,854,244.12

Three-quarters of the reduction contemplated, will have been effected out of half the taxes in the items mentioned. There would seem to be no difficulty out of the remaining half of the taxes to make the remaining quarter of the proposed reduction. The subject will be further discussed when the principal objects of the expenditures are separately considered.

THE PERMANENT RESULT.

It is not intended to insist on positive exactness of results. In the exigencies of a great State, unforeseen necessities may arise. But, in private business, and in the administration of those great corporate bodies which are the growth of modern times, and some of which receive and disburse larger sums than the treasury of the State, it is found to be wise and even necessary to work up to a systematic plan. The State ought to do the same. It is one of the evils of unsystematic legislation and administration that results are never certain; that expenditures exceed appropriations, and appropriations exceed taxes. A floating debt is thus created by some subordinate officer or authority which the Constitution expressly prohibits the law-making powers of the government from creating, except to the extent of $1,000,000.[a]

But there seems to be no reason to doubt, that, on the scale of our present population and our present policy, the remission of taxes may be permanent.

In 1877, the million and three quarters required this year for the bounty debt, will be unnecessary. It is possible, if the canals are well managed, that the demand from them on the treasury may be somewhat reduced. The State prisons, the quarantine and the salt works all afford scope for retrenchments. They now share the fate of all other business and speculations which the State undertakes. A decay of income and a growth of expenditures indicate the incompetence of the State in its sleepy indifference to compete with the ever vigilant and earnest activity of private interests. The deficiency in the State prisons for the year, is nearly five hundred and fifty thousand dollars, and of the quarantine about sixty-two thousand dollars, making $612,000. This sum and the last installment of the bounty debt, amounting to a million and three-quarters, which is a charge on this year, and the deficiency in the canal sinking fund, amount in the aggregate to $2,960,000.

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[a] Const. 1846, art. 7, § 10.

The result, expressed in round numbers, is that, after you have reduced the taxes for State purposes from sixteen millions to eight millions, three of the eight millions remaining are or ought to be for exceptional expenditures. That amount, therefore, ought to form a fund adequate, after this year, to meet the exceptional expenditures of the State for improving the main trunks of the canals, and finishing all public buildings that ought to be finished, and for an ultimate further remission of taxes.

I have made this explicit exposition of the subject, at the opening of your session, in order that in all the formative stages of legislation involving expenditures, appropriations and taxation, the considerations suggested may be present to your minds. The amendment to the Constitution, first brought into operation at the last session, imposing on the Governor the obligation to revise every item of appropriation, works a change in official practice, amounting to a revolution.[b] Hitherto, as the appropriations were embraced in bills that had to be accepted or rejected, as a whole, the items have been in effect, withdrawn from the action of the Governor. The responsibility now devolved on him is very laborious and difficult. It tends, perhaps, to work some change in the customary relations of the departments. In ordinary legislation, it is stretching the function of the executive veto too far, to apply it to every case in which the Governor, if a member of the Senate or Assembly, would vote against a bill. There seems to be a disposition to hold the Executive to the extreme of accountability in respect to appropriations. This tendency may be carried so far as to disturb the constitutional equilibrium of the executive and legislative forces. Not desiring to amplify my official powers, nor disposed to shrink from any just responsibility, the occasion seems fit to invite a frank understanding, to avow my own wish for, and to seek from you, a cordial co-operation on this subject, for the good of our common constituents. I have endeavored to narrate the financial condition, prospects, and possibilities of the State in plain language, divested of the technical forms of complicated accounts, which render financial statements capable of being analyzed only by experts, and incapable of being understood by anybody, without explanations which they do not contain.

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[b] Const. 1846, art. 4, § 9, am. 1874.

POLICY OF THE STATE AS TO THE ERIE CANAL.

In my annual message of last year, I entered into a full discussion of the policy of the State in respect to the construction, ownership, management and improvement of the Erie Canal.

In my special message of March 19, 1875, I opened a discussion as to the improvidence, waste and corruption which have infested the administration of the canal system. Inviting your attention to those documents, I confine myself on this occasion, to a brief summary of the policy of the state as it may be deemed now to be settled.

1. Not denying the general unfitness of Government to construct, own or manage the works which offer the means of transportation, the State of New York saw an exception in the situation and in the nature of the canals which are trunk connections between the Hudson River and the great inland seas on the north and west. Connecting vast navigable public waters, they assume something of a public character. They are a link of 350 miles in a system which, on the one hand by 1,500 miles of waters of the great lakes, and on the other hand by 3,150 miles of the waters of the Hudson river and the Atlantic ocean, connects the crowded populations of Europe with the fertile prairies of the Northwest, covered with their network of tributary railways.

2. The Erie canal remains an important and valuable instrument of transport not only by its direct uses, but by its regulating power in competition with the trunk railways between the East and the West.

3. The Erie Canal has a capacity to accommodate an aggregate tonnage at least twice as large as has ever offered. It is capable of being made an instrument of the cheapest transportation per ton, per mile, which artificial navigation, in existing geographical and physical conditions, can attain; not by changing its essential character, but by perfecting it and giving it the highest efficiency.

4. The policy upon which the State appears to have decided and that which I had the honor to advocate in the Constitutional Conventions of 1846 and 1867, and which is set forth in my messages of the last year, is to keep these great public works as a trust for the million not seeking to make revenue or profit to the sovereign out of the right of way.

The State originally undertook the construction and administration of the public works in order to secure a facile and cheap transportation, to which private enterprise was then and long afterward inadequate.

It early opened to free competition every mode of transit, even in rivalry to its own works, for the interchange of the agricultural products of the West, and of the manufactures and merchandise of the East.

It has not exacted from the trust a full return of its advances; but in expenditures in excess of the revenues and defrayed by taxes, and in remission of tolls, it has made large sacrifices to cheapen the cost of transportation.

It has not sought to limit the advantages of its policy to its own citizens; nor has it paused because the prices (even for our own consumption) of exported cereals and other agricultural products are fixed by foreign markets, so that the benefits of a reduced cost of conveying them to the seaboard accrue chiefly to the western producers.

SITUATION AT THE LAST SESSION.

In the progress of the last session, it became obvious that the retrenchment in the ordinary expenses of the canals, and in the outlays for new work recommended in the message, were not likely to be in any degree realized. The appropriations for ordinary repairs, as passed by the Assembly and by the Canal Committee, were nearly equal to those of the previous year. The appropriations for new work, as called for by the budget submitted by the canal commissioners to the committees of the Legislature, were at least as large as the similar estimates of the year before.

In the meantime, the canal revenues for the months of September and October, which are in the then current fiscal year, were falling off one-quarter of their former amounts; and the forwarders, boatmen and others engaged in transportation, were appealing for a reduction in the tolls, in order to enable them to continue their business.

On an investigation, induced by this emergency, it was found that in the preceding five years the State had levied taxes of between eleven and twelve millions of dollars for extraordinary repairs besides deficiencies in the sinking fund, thereby imposing a burden of almost three millions a year upon the taxpayers.

And upon inquiry as to how these vast sums had been expended, it appeared much had been for objects of no real utility, that many of the contracts had been obtained by sham biddings in evasion of the law, and there was reason for suspicion as to the durability and value of the work.

REFORM.

In this condition of things, I proposed a reconciliation between the discontented taxpayers and the distressed transporters by a thorough reform in the service and the system, which should remit taxes, reduce tolls, and increase the efficiency of the canals.

INVESTIGATING COMMISSION.

The first step was to obtain the information necessary to enable remedies to be devised and wisely applied. The commission appointed under the joint resolution and statute, consisting of Messrs. John Bigelow, Daniel Magone, Jr., Alexander E. Orr, and John D. Van Buren, Jr., immediately after their organization made such personal inspection of the most important parts of the canals as was possible before the water was let in for navigation; and after that was done they proceeded to investigate many of the contracts for work on the canals and the transactions connected with them.[2]

I shall not outrun the public sense of the great and onerous service which these gentlemen have given to the State when I say that they have executed the trust reposed in them with unswerving and impartial fidelity, and with distinguished intelligence and ability.

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[2] The report of the canal investigating commission was presented to the Senate on the 15th of February, 1876, and appears as document, No. 48. According to the journal the report was also presented to the Assembly, but was not printed.

The frauds are not the simple case of embezzlement of public money, or a cheat in the payment of taxes, but are to be traced through the complicated work of construction, and are sheltered by the complicity or connivance of officials whose duty it is to protect the State. The truth has to be discovered and the proof obtained from unwilling and sometimes unscrupulous witnesses.

The primary object is to reform the system and establish every possible security against a recurrence of the evils. While security for the future is of transcendent importance, indemnity for the past is to be sought. Civil and criminal redress is to be enforced.

If it is a matter of toil and difficulty to make the investigations effectual, it is infinitely more so to conduct the actions in the courts to their conclusion, in cases so numerous and complicated. It will be necessary for you to make a special appropriation for aid to the Attorney General.[3]

INCOME AND EXPENSES OF CANALS.

The income and expenses of the canals for the fiscal year ending September 30, 1875, are shown by the following table:

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[3] Chapter 193, passed May 1, contained numerous appropriations for the Attorney General's department for expenses, allowances to special counsel, and costs, etc., in various canal actions and prosecutions.

STATEMENT SHOWING THE TOLLS RECEIVED ON EACH CANAL, AND THE TOTAL EXPENDITURE FOR ORDINARY AND EXTRAORDINARY REPAIRS AND NEW WORK DURING THE FISCAL YEAR ENDING SEPTEMBER 30, 1875:

CANALS.	Income tolls.	DISBURSEMENTS.			Income in excess of disbursements.	All disbursements in excess of income	Income in excess of disbursements for ordinary repairs.	Disbursements for ordinary repairs in excess of income.
		Ordinary repairs.	Extraordinary repairs and new work.	Total.				
Erie Canal	$1,708,374 72	$803,985 09	$673,098 77	$1,477,083 86	$231,290 86		$904,389 63	
Champlain Canal	110,893 17	135,942 51	243,343 89	379,286 40		$268,393 23		$25,049 34
Oswego Canal	45,057 69	99,014 95	10,325 96	109,340 91		64,283 22		53,957 26
Cayuga and Seneca Canal	13,616 07	27,927 12	9,796 88	37,724 00		24,107 93		14,311 05
Chemung Canal	1,717 32	23,230 41	3,076 58	26,306 99		24,589 67		21,513 09
Chenango Canal	2,909 63	24,537 41	3,077 49	27,614 90		24,705 27		21,627 78
Black River Canal	7,214 64	44,846 17		44,846 17		37,631 53		37,631 53
Genesee Valley Canal	12,406 26	97,841 33	9,151 18	106,992 51		94,586 25		85,435 07
Oneida Lake Canal			21,348 55	21,348 55		21,348 55		
Baldwinsville Canal								
Oneida River improvement	215 40		94 50	94 50	120 90		215 40	
Seneca River Towing path	89 72				89 72		89 72	
Cayuga Inlet	369 93				369 93		369 93	
Crooked Lake Canal	126 09	7,396 80		7,396 80		7,270 71		7,270 71
	$1,902,990 64	$1,264,721 79	$973,313 80	$2,238,035 59	$231,871 41	$566,916 36	$905,064 68	$266,795 83

Total disbursements on all canals in excess of tolls, $335,044.95.

Tolls in excess of disbursements for ordinary repairs, 638,268.85.

REAL INCOME.

It will be seen that the income is stated at $1,902,990.64, and the explanation is made at the Auditor's office that as the receipts are a month later than the earnings, the computation includes the receipts of September, 1874, and excludes those of September, 1875. As the former month yielded $166,341.10 more than the latter, except for this mode of computation the result would be $1,736,651. The estimate in my special message of March 19th, founded on the data there given, was $1,715,168. The calendar year 1875 gives only $1,584,018.

COMPARATIVE STATEMENT, 1874 AND 1875.

The following is a comparative statement of the revenues and expenses for the fiscal years 1874 and 1875, furnished at the Auditor's office:

Statement Showing the Aggregate Receipts and Payments on Account of the Ordinary Expenses of the Canals for the Last Two Years:

	1874.	1875.
Receipts from tolls, etc.....	$2,947,972.91	$1,925,995.63
Payments to superintendents and Repair Contractors......................	$1,176,021.46	$985,105.10
Payments by Canal Commissioners for Repairs...	121,694.91	279,616.69
Payments to Collectors and their Assistants	84,833.44	75,857.41
Payments to weighmasters and their assistants.....	12,846.39	12,118.09
Refunding tolls, salaries of officers, &c	74,070.63	61,759.65

Reserve balance of appropriation for concreting the sixteen locks and retrunking the Upper and Lower Mohawk aqueducts		$52,850.01
Total expenses for year	$1,469,466.83	$1,467,315.95
Net receipts	1,478,506.08	458,679.68

This statement shows a falling off in the toll receipts of the last fiscal year as compared with those of 1874 of $1,021,977.28, decrease in payments of $2,150.88, and a loss in net receipts of $1,019,826.40 — the net revenue being $625,610.70, short of the requirements of the sinking fund under article 7, sec. 3 of the Constitution; the amount required being as follows:

Interest, in coin	$634,290.38
For sinking fund	450,000.00
	$1,084,290.38
Actual surplus	458,679.68
Deficiency	$625,610.70

EXPLANATORY COMMENT.

It is to be noted that the expenses during all the present year, except the last two months of navigation — that is, up to September 30, 1875 — were under the appropriations of 1874. The reductions effected at the last session did not begin to operate until October 1, 1875.

The diminution in business caused by the bad conditions of our domestic trade, the growing diversion by the completion of railways and the reduction of tolls, all operated from the beginning of navigation, or five months out of the seven of the season earlier than the reduction of expenses.

The falling off of income in the two last months of 1875, as compared with the last two months of 1874, is less than the reduction in ordinary expenses and repairs for the fiscal year commencing October 1, 1875.

FUTURE MEASURES.

In this state of things it is obvious that our first measure should be to ascertain completely, and without unnecessary delay, the financial condition of the canals: the state of the contracts yet outstanding for extraordinary work, in order to determine what ought to be stopped or abandoned and what ought to be continued, and the means applicable to any expenditure they may require.

A second measure is the careful and thorough investigation of ordinary expenses and repairs, for the purpose of keeping them down to the lowest point consistent with the efficiency of the canals.

A third measure relates to the disposition of such laterals as are not necessary as feeders. It will be recollected that at the last session, in view of the complicated questions incident to this subject, requiring legal engineering and business skill, and much devotion of time and attention, I recommended its reference to a special commission. The Legislature, however, preferred to charge the Canal Commissioners and State Engineer and Surveyor with the additional duty. I am not advised what report they will make on the subject.[4]

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[4] The report of the State Engineer and Surveyor, and the Canal Commissioners on the lateral canals, as required by the act of 1875, chapter 499, was presented to the Assembly on the 7th of February, 1876, and appears as document No. 46.

The Senate did not print the report.

Chapter 382, approved May 20, created a commission composed of four members, who were required to examine the Crooked Lake, the Genesee valley, Chenago and Black river canals, and their appurtenances for the pur-

A fourth measure is a radical change in the system of administration. The present machinery is chaotic, and except with something of the unity which existed in practice in the Canal Board under the old Constitution, is incapable of acting with efficiency or economy. The abuses, perversions of law and morals, improvidence and waste which cling around it, are the growth of years. When a man of average well-meaning and average ability comes singly into one of these administrative offices, the graft develops, not its own nature, but the nature of the parent stem. It is difficult to carry out reform by instruments that are incurably averse to reform; whose indolence, comfort, associations, habits, assistants and advisers, are all naturally opposed to what they are expected to do. Every step of progress is not only through an enemy's country, but beset by unexpected betrayals.

A constitutional amendment, changing the system of administering the canals, was unanimously passed by both Houses at the last session. Your attention is respectfully called to the importance of an early consideration of the subject.[5]

A fifth measure is the continuance for the present year of the reduction in the tolls made for last year.

A sixth measure is to subject all the work called extraordinary repairs, to a systematic and thorough scrutiny and discard everything that is not clearly and certainly necessary. When the debris of the old rotten system shall be cleared away, there is a work of real utility and small cost, which will claim an early attention, and for which the

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pose of ascertaining and determining the income derived from them, and the probable expense of maintenance, their possible use as feeders to the Erie canal, and the disposition that ought to be made of such canals. The Commission was required to report to the Legislature of 1877. See 1877, note 2, *post,* vol. 7, p. 8.

[5] This amendment which provided for a superintendent of public works, was by, chapter 345, approved May 15, submitted to the people at the November election in 1876, and approved, and became section 3 of article 5.

people would be willing to provide the means. On this topic I repeat the remarks contained in the special Canal Message of March 19, 1875:

"In my judgment, a far more important improvement of the Erie Canal would be effected by a thorough system of ordinary repairs, which should give the water way its proper and lawful dimensions; and by progressively deepening it, wherever reasonably practicable, from seven to eight feet. As the object would be merely to enable the submerged section of the boat to move in a larger area of water, so that the displaced fluid could pass the boat in a larger space, it would not be necessary to alter the culverts or other structures, or to carry the walls below the present bottom; and the benefit would be realized in each portion of the canal improved, without reference to any other part of the channel which should remain unchanged. In facilitating the movement of the boat, and quickening its speed, it would increase the amount of service rendered in a given time, and would thereby diminish every element of the cost of transportation. It would benefit the boatmen and carriers more, even than one cent a bushel remission of tolls. It would be more real utility to navigation than five or ten times its cost expended in the average manner of so-called improvements on the public works. But it is too simple, too practically useful, to enlist the imagination of projectors who seek the fame of magnificent constructions, and of engineers who build monuments for exhibition to their rivals, or to awaken the rapacity of cormorants who fatten on jobs."

I have thus briefly sketched the outline of a policy which is the best method to promote cheap transportation, not only so far as the Erie Canal is concerned, but in its general effect upon all methods of transportation.

It seems to me that these measures are entitled to the effective support of the forwarders, boatmen, transporters, as well as to that of the taxpayers, and all who desire to rescue our public works from spoliation.[6]

THE NEW CAPITOL.

The following statement shows the payments for this object from the State Treasury, including purchase of lands, etc., to June 20, 1875:

To September 30,	1863	$51,593.66
"	1864	9,453.55
"	1865	10,860.08
"	1866 Congress Hall Block	62,250.00
"	1867	10,000.00
"	1868	50,000.00
"	1869	451,215.63
"	1870	1,223,597.73
"	1871	482,942.37
"	1872	856,106.98
"	1873	1,175,600.00
"	1874	610,275.16
From Oct. 1, 1874, to June 20, 1875		1,000,600.00
		$5,997,495.16

A statement from the clerk of the present commission, which was organized on the twenty-ninth of June, 1875, is as follows:

Amount paid on account of expenditures prior to January 1, 1875	$263,659.95
Amount expended in construction since the 29th June	491,349.95
Estimated liabilities on January 1, 1876	65,542.22

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[6] For further consideration of the subject of canals, see special message of March 24, and notes 15, 16 and 17.

The memorandum attached to the supply bill signed on the 21st of June * contains the following observations on

THE APPROPRIATION FOR THE NEW CAPITOL.

"Of the million provided for this purpose, more than $200,000 will be consumed in the payment of arrears now existing in the nature of a floating debt, and less than $800,000 will be applicable to new construction.

"It is with reluctance that I assent to this appropriation. Nearly $6,000,000 has already been expended upon this edifice. Although the general plan has been determined, the details have not been worked out with such thoroughness and such certainty as to afford any guide as to the amount which will probably be required for the completion of the building. If it were an original question I should have no hesitation in condemning and discarding a work of such unnecessary cost; but it cannot be now abandoned without losing all that has been thus far expended. In deciding on the wisdom of completing it, we are to consider only whether it will be worth the future outlay for its completion. What that cost will be ought to be ascertained with all the certainty attainable. I doubted whether the work ought not to be suspended until the plans of future construction should be settled, and full assurance had that the annual expenditure should be made usefully in furtherance of those plans. In the meantime I favored a reduction of this appropriation below the amount adopted by the Legislature.

"But provisions for this general object were inserted in the Supply Bill. They, perhaps, justify the allowance of this item, especially as the law imposing a tax for raising the money for this purpose will necessarily go into effect, whatever might be done with this appropriation."

The new Commission consists of the Lieutenant-Gov-

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* *Ante*, p. 877.

ernor, the Auditor of the Canal Department, and the Attorney General.

The act provides that, before any portion, exceeding fifty thousand dollars, of the sum appropriated for the construction of the new capitol should be expended, full details, plans and specifications of the story of said building containing the legislative halls, should be made and approved by the said Commissioners. This requirement of the law was complied with, and the work of construction was prosecuted through the summer and autumn.

The act further provides that " not more than one-half of the said appropriation shall be expended before full details, plans and specifications of the whole of the remainder of said building shall be made and approved in writing," by the Commissioners. This requirement has not, as yet, been complied with, and the work upon the capitol has been suspended. The plans and specifications have been prepared by the architect, and were submitted to the Commissioners on the 15th day of December, 1875, but they have not, as yet, been approved by the Commissioners.

The determination of all the details of so extensive a building will require much careful consideration.

It is the intention of the Commissioners, before approving the plans for the completion of the new capitol, to ascertain and report to the Legislature the cost of execution; they are now, as I am informed, engaged in this very necessary preliminary work.[7]

INSANE ASYLUMS AND REFORMATORY.

Four state institutions are in process of construction — three asylums for the insane and a reformatory. It might have been supposed that such an extensive provision for the insane as is contemplated in these three institutions could not become necessary on the instant, and that common prudence would have dictated that one institution should be completed before another was begun. But, unfortunately, not even the sacred influences of charity could save these works from the spirit of legislative log-rolling, or the rapacity of local expenditure.

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[7] The supply bill, chapter 193, appropriated $800,000 for the new capitol. See also special message of May 1, for the veto of the new capitol item.

The policy of beginning everything and finishing nothing has prevailed. Construction has been on a scale of costly extravagance.

At the last session two and three-quarter millions of dollars raised by taxes, had been expended on these four institutions, and about $450,000 raised by taxes and appropriated remained unexpended, and yet no considerable part of these works had been made available.

The plan was adopted at that session of confining the appropriations for the year to such sums as would make available and bring into use the portions of the structures most nearly approaching completion.

The construction of the other portions of those buildings, if they are to be completed according to the present plans, may be deferred until after the extinction of the bounty debt in 1877.

The interval will afford an opportunity to revise the whole policy of the State in respect to these institutions, and to reconsider the plans and methods of their construction.

The expenditures thus far are as follows:

Hudson River Asylum:	
Total expenditure to December 20, 1875...	$1,337,978.52
Buffalo Asylum:	
Total expenditure to December 20, 1875......	767,351.91
Middletown Asylum:	
Total expenditure to December 20, 1875......	454,099.38
Elmira Reformatory:	
Total expenditure to December 20, 1875..	760,117.98
Total..................................	$3,319,547.79

The cost of completing these buildings is as yet a matter of conjecture; it probably would exceed what has already been expended.

It is quite clear that an outlay of $5,000 per inmate, for the purpose of providing shelter for the unfortunate objects of public charity, is unreasonable and extravagant. That would be equal to $25,000 for five persons, which compose the average family in this State. How many families of laborious and thrifty producers can afford to live in a house costing $25,000?

In 1865, less than one-sixtieth of the houses of this State were of stone, and their value was about $10,000 each, or $2,000 for each inmate. Those of brick, which are about one-eighth of the whole number, were valued at $6,000, or $1,200 for each inmate. Those of wood, which are three-fourths of the whole number, were valued at $1,100, or $220 for each inmate.

I deny that there is any sound public policy in erecting palaces for criminals, for paupers, or for the insane. A style of architecture simple, and fitted to the nature of its object, would reconcile artistic taste with justice toward the industrious producers, on whom falls the burden of providing for the unfortunate. Waste in such edifices is not only a wrong to the taxpayers, but by just so much it consumes the fund which the State is able to provide for the objects of its charity.

Nor does the mischief stop with the completion of costly dwellings. The State still has to provide annually for the support of their inmates. By an inevitable association of ideas in men's minds, magnificent homes lead to magnificent current expenditure. The pride of officers and managers, and of local admirers, and the zeal of benevolence, are freely indulged where they are gratified without expense to those who are swayed by them.

It is to be remembered that, after all, the burden of taxation is chiefly not upon accumulated wealth, but upon the current earnings of the million who carry on their productive industries in frugal homes. They ought not to be the only class disfavored by the policy of the State.

STATE PRISONS.

The following statement shows the expenditures and earnings of each of the prisons for the year ending September 30, 1875:

	Advances from the Treasury.	Received from earnings.	Excess of expenditures.
Auburn	$208,719 35	$76,935 62	$131,783 73
Clinton	328,638 13	133,446 25	195,191 88
Sing Sing	341,826 20	158,596 64	183,229 56
Miscellaneous expenditures not distributed, including $28,144.50 for transportation of convicts	35,344 50	....	35,344 50
	$914,528 18	$368,978 51	$545,549 67

The excess of advances from the Treasury over receipts from earnings is as follows:

In 1867 it was	$366,874.79
In 1868 it was	512,547.74
In 1869 it was	595,774.45
In 1870 it was	461,304.99
In 1871 it was	470,309.23
In 1872 it was	465,881.84
In 1873 it was	597,289.06
In 1874 it was	588,537.42
In 1875 it was	545,549.67

The number of convicts in each of the prisons, September 30th, 1873, 1874, and 1875, was as follows:

	1873.	1874.	1875.
Auburn	1,104	1,202	1,312
Clinton	567	552	553
Sing Sing	1,354	1,306	1,616
Total	3,025	3,060	3,481

Although the burden imposed upon the taxpayers of the State by these institutions has been slightly decreased within the last three years, I think the people ought not to be satisfied with the present exhibit.

Under a proper system, and with proper management, the prisons of the State, filled for the most part with able-bodied men, ought to be self-supporting, if, indeed, they ought not to produce a considerable revenue to the State. Other institutions of a like character, and possessing in some respects, less advantages, impose no burden upon the people, and one conspicuous institution in this city affords a surplus to the county.

I recommend that a thorough inquiry be made with respect to the management of the State prisons in such manner as the Legislature may think best, to the end that such reforms, both in legislation and in administration, may be accomplished as are necessary to produce the desired result.[8]

I also recommend to your adoption the resolution passed at the last session, and which requires your concurrence, for submitting to the people the constitutional amendment therein contained relating to the State Prisons.[9]

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[8] A state prison investigating commission was created by chapter 160, passed April 22, which was required to investigate affairs relating to the several state penal institutions, including the Elmira reformatory. The investigation was to be terminated on the 1st of September, 1876, and the act required the commission to present the evidence taken by it, with its recommendations to the Governor as soon as practicable after the 1st of September, also to the Legislature at the opening of the next session. By chapter 197, passed May 2, the time of the commission was extended from September 1 to December 31, 1876; it was required to present a partial report to the Governor not later than October 1, and a full report at the opening of the legislative session of 1877.

[9] This amendment, which created the office of superintendent of State Prisons with other changes in the administration of these institutions, was by chapter 345, approved May 15, submitted to the people at the November election in 1876, and approved. The amendment became section 4 of article 5.

SALT SPRINGS.

The quantity of salt, from the Onondaga Salt Springs, inspected during the last fiscal year was 6,589,676 bushels, less by 4,515 bushels than the production of the preceding year.

The net revenue from this source was $5,148.32, showing a falling off as compared with the preceding year of $5,193.35.

It is represented by the Superintendent that a considerable outlay will soon be necessary for repairing and renewing the machinery connected with the works, and for completing the sinking of new wells.

I recommend that an investigation be had with respect to the necessity of such expenditure, the best method of operating the works, and the general management of the concern.[10]

QUARANTINE.

The payments from the State Treasury for this object during the fiscal year ending September 30, 1875, were:

Advances to Commissioners for maintenance of Quarantine establishment..............	$48,000.00
Salaries of Commissioners..................	7,500.00
Commissioners appointed to confer with the authorities of New Jersey on jurisdiction.	3,000.00
Pay of police	3,953.18
	$62,453.18

It seems to me that this establishment ought to be made self-supporting. To that end, I commend the subject to your consideration.

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[10] By a concurrent resolution adopted by the Assembly and Senate on the 1st and 2d days of February respectively, the committees on the manufacture of salt were constituted a joint committee to investigate matters relating to the salt springs as suggested by the Governor, and report without delay.

THE NATIONAL GUARD.

The National Guard of this State consists of eight divisions, eighteen brigades, one regiment and ten separate troops of cavalry, eleven separate battalions of artillery, and twenty-five regiments, twelve battalions and seven separate companies of infantry. They comprise 1,505 commissioned officers, and 17,908 non-commissioned officers, musicians and privates. The aggregate force is 19,413.

The condition of the guard, as respects organization and discipline, is eminently satisfactory.

The cost of armories and the charge for the rent of such as were occupied under leases in the city of New York had become a serious burden and a gross abuse. Contracts marked with extravagance and improvidence, with favoritism and corruption, had been made. They had become the subject of litigation, and were generally held by the courts to be illegal and void. The rentals claimed are about $275,000 per annum. The claims for arrears of rent amount to about $700,000; and the rent to accrue, if the leases should be retained until their terms expire, would be an additional $1,000,000.

The fair rent of an armory where property is so valuable as in the city of New York is so considerable that regiments which are reduced to mere skeletons cannot be kept in existence without injustice to the taxpayers of the city. For this reason six of the sixteen regiments and battalions of the first division which consists of the city of New York, have been disbanded. As the city owns four armories, there will be but six instead of twelve regiments to be provided for. It is hoped that the charge on the city treasury can be reduced to less than a quarter of its former amount. This necessary measure could not be executed without inflicting some wounds in particular cases; and I share the sense of sacrifice of personal associations and patriotic memories.

COLLEGES AND ACADEMIES — HIGHER EDUCATION.

The reports to the Regents of the University from the Colleges of the State, show a gratifying increase of numbers both of students and graduates. Many of the Colleges have received from private liberality additions to their endowments which place them in a condition of comparative independence. The character of instruction is elevated and strengthened, the courses are more comprehensive and better adapted to the demands of the age.

The attendance on the Academies and High Schools does not much vary from that of the preceding year. These institutions, occupying an intermediate place between the Colleges and the Common Schools, provide for the wants of those who desire more than the latter can furnish, and who are not able to meet the expenses or to give the time required by the former.

The State Library and the State Cabinet of Natural History have received valuable additions. Their condition will be exhibited in the reports of the trustees soon to be presented.

COMMON SCHOOL STATISTICS FOR THE YEAR ENDING SEPTEMBER 30, 1875.[11]

Total receipts, including balance on hand September 30, 1874	$12,516,362.96
Total expenditures	11,365,377.79
Amount paid for teachers' wages	7,843,231.67

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[11] The Legislature adopted concurrent resolutions proposing the following constitutional amendments requiring the maintenance of free common schools, and prohibiting appropriations for sectarian instruction therein:

"Free common schools shall be maintained throughout the State forever. The Legislature shall provide for the instruction in the branches of elementary education in such schools of all persons in the State between the ages of five and twenty-one years, for the period of at least twenty-eight weeks in each year.

"Neither the money, property or credit of the State, nor of any county, city, town, village or school district, shall be given, loaned or leased, or be otherwise applied, to the support or in aid of any school or instruction under the control or in charge of any church, sect, denomination or religious society;

Amount paid for school houses, repairs, furniture, etc.	1,844,347.20
Estimated value of school houses and sites	36,393,190.00

Number of school houses	11,787
Number of school districts, exclusive of cities	11,289
Number of teachers employed for the legal term of school	19,157
Number of teachers employed during any portion of the year	29,977
Number of children attending public schools	1,058,846
Number of persons attending Normal schools	6,207
Number of children of school age in private schools	135,093
Number of volumes in school district libraries	812,655
Number of persons in the State between the ages of five and twenty-one years	1,579,504

STATE TAXES IN AID OF COMMON SCHOOLS.

The following statement shows the amount produced annually by the ¾ mill tax for the support of Common Schools, as provided by chapter 186, Laws of 1856:

1857	$1,074,982.20
1858	1,053,680.74
1859	1,053,873.04

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nor to or in aid of any school in which instruction is given peculiar to any church, creed, sect or denomination, nor to or in aid of any such instruction; nor to or in aid of any school or instruction not wholly under the control and supervision and in charge of the public school authorities.

"This section shall not prohibit the Legislature from making such provision for the education of the blind, the deaf and dumb, and juvenile delinquents as it may deem proper, except in institutions in which instruction is given peculiar to any church, creed, sect, denomination or religious society; nor shall it apply to or affect the Cornell University endowment fund, hitherto pledged and appropriated."

1860	$1,064,473.14
1861	1,081,325.57
1862	1,086,977.96
1863	1,090,841.11
1864	1,125,749.90
1865	1,163,159.76
1866	1,148,422.22

The following shows the amounts produced by the 1¼ mill tax for this object, as provided by Section 3, Chapter 406, Laws of 1867:

1867	$2,080,134.65
1868	2,207,611.42
1869	2,325,150.96
1870	2,458,751.48
1871	2,565,672.37
1872	2,610,784.31
1873	2,662,032.98
1874	2,711,634.84
1875	2,959,725.13

The amount raised by State tax for the support of Common Schools, prior to the act of 1856, was $800,000 annually. See Section 1, Chapter 180, Laws of 1856.

THE METHOD OF APPROPRIATION.

A standing appropriation, such as used to exist before 1846, is prohibited by the Constitution, which requires a revision of old appropriations at the expiration of every two years.[c] The system of making formal appropriations in obedience to a standing law, is liable to the objection that it practically defeats the policy of this constitutional provision. The Legislature does not in fact reconsider, each time, how much ought to be appropriated to the object, but mechanically conforms to the standing law which fixes the rate. The assessors become in effect the power that determines the taxes. It cannot be supposed that the real value of property subject to taxation has increased during the period when nearly a million has been added to this item of them by nominal enlargements of the valuation. Nor can it be doubted that, in all business, equal services can now be obtained at less prices than in 1867. The appropriation ought to be for a specific sum, and the taxes adjusted to provide that amount.

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[c] Const. 1846, art. 7, § 8.

STATE CERTIFICATES.

An act amendatory (Chap. 567) of the general school law was passed at the close of the last session, and became a law by receiving the Executive signature on the 9th of June, 1875. The fifth section of that act made a material change in the law regulating the granting by the State Superintendent of certificates of qualification to teach. That officer was authorized by section fifteen of the general school act, passed May 2, 1864, to grant certificates "on the recommendation of any school commissioner or on other evidence satisfactory to him."

A clause authorizing the State Superintendent to issue, "in his discretion," certificates of qualification to graduates of any seminary of a private corporation, known as the Sisterhood of Grey Nuns, on their filing with him their diplomas, appears in an amendment of the charter by chapter 353 of the Laws of 1875, which became a law on the 15th of May. This provision did not purport to make a person having such diploma a qualified teacher, like a person having a diploma of a State Normal School, but merely vested the State Superintendent with a discretion to grant to such person a certificate of qualification. That power the Superintendent had before, and has had for the previous eleven years. The provision had no real effect; it conferred no new power on the Superintendent; it added nothing to his existing power; but it bore the appearance of a special grant of a privilege to one corporation; which may be presumed to have escaped attention, for the bill passed the Assembly once and the Senate twice by the affirmative vote of every member present. But the discretionary power of the Superintendent, under the law of 1864 and under this act, was afterward completely abrogated by the law of the 9th of June. He was prohibited from granting any certificates except on public examination. The law of the 9th of June, was later than the Grey Nun's act, and repealed the clause of that act which authorized the Superintendent, in his discretion, to grant certificates to graduates of the seminaries of the Grey Nun's corporations. It went further. It repealed the power which he had under the law of 1864 to do the same thing. If the Grey Nun's corporation derived any special privilege from the act of the 15th of May, that privilege was destroyed by the law of the 9th of June. A uniform rule is now made applicable to all.

This result is in accordance with the policy of this State as established by the recent constitutional amendment[d] relating to the public schools, which has been and is to be obeyed and executed in good faith.

PAUPERISM.

The report of the State Board of Charities will be presented to the Legislature, and I commend it to your earnest attention.

The question, as to the proper mode of providing for the chronic poor, is addressed not only to the conscience and the feelings, but to the reason and the judgment. It is a question not so much of philanthropy as of political economy. The members of the board bring to its discussion great zeal, large experience and rare intelligence. Without committing myself to the support of all their recommendations, I ask your thoughtful consideration of their suggestions.

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[d] Const. 1846, art. 3, § 18, added 1874, special privileges.

The act of 1875, providing for the separation of pauper and destitute children from the adults of the same class, has been put in general operation, but years must elapse before its beneficial results will be fully apparent. This legislation has met with warm approval in other States, and will, no doubt, be followed by many of them at an early day. It remains in this State to secure the separation of children convicted of petty offenses, from older offenders, while confined in our penal institutions.

The subject of providing work for paupers, especially of the class styled "tramps," is commended to your consideration. Even if their earnings were small, the fact that this class of persons were compelled to labor in return for their subsistence, would, doubtless, lessen the number of applicants for admission into our poorhouses, and for outside relief, and would induce many of them to apply themselves to regular employments.

I renew the recommendation made in my last annual message, for a thorough revision of the poor laws.

THE STATE CENSUS.

The census taken during the last summer makes the population of the State 4,705,208. The utility of the information it collects, aside from the primary object of providing the means for a re-apportionment of the representation in the Legislature, depends largely upon the promptness with which the compilations are made and furnished to the public. I recommend that provision be made to complete the work as early as the first of next December, and that the requisite appropriation for that purpose be made.[12]

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[12] Chapter 193, appropriated $30,000 for expenses connected with the completion and tabulation of the State census of 1875.

MUNICIPAL GOVERNMENT.

A commission to consider this important and interesting subject has been appointed under the joint resolution of the last session, and is organized and holding its sittings. The restrictions necessary to arrest the creation of municipal debts, which has become a grave evil, affecting one-half of the people of this State, and calling urgently for redress, may well command the attention of the Commission and of the Legislature, independently of the complicated questions involved in the structural organization of municipal government and the distribution of its powers.[13]

CENTENNIAL EXHIBITION.

A State Centennial Board for New York has been appointed, under Chapter 525, of the Laws of 1875, to represent this State, in co-operation with the Centennial Commission appointed by the President of the United States, in the preparations for and at the international exhibition, to be held at Philadelphia, in commemoration of the one hundredth anniversary of the Declaration of Independence. The event not only appeals to the people of the whole United States by the patriotic associations which attend it, but it will be an occasion of unprecedented interest in the opportunity it affords to all our citizens of a personal inspection of the progress and state of the industrial arts in all the countries of the civilized world.

BANKS.

Eighty-four banks were doing business under the laws of this State on the first of October last. Eight banks organized and commenced business during the fiscal year ending October 1. During the same time one bank failed, and three were converted into national banks.

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[13] See 1875, note 19, for resolution providing for a municipal reform commission, *ante*, p. 844. The Legislature adopted a concurrent resolution in April, 1876, extending the commission's time to report to the opening of the legislative session in 1877. See 1877, note 13, *post*, vol. 7, p. 30.

Circulating notes to the amount of $9,314 were destroyed by the Bank Department, and forty-four banks were credited with lost circulation during the year to the amount of $246,649, the time for redeeming the same, after the usual legal notice, having expired. The amount of circulation outstanding was, on the first day of October last, $849,226.50. Of this amount, the sum of $218,528 was secured by deposits of cash, stocks, or stocks and mortgages. The balance, $630,698.50, is not secured, it having been issued by banks chartered previous to the passage of the free banking law. There remain but twenty-three of these banks that have not taken steps to finally redeem their notes.

SAVINGS BANKS.

There were one hundred and sixty savings banks on the first day of July last. Of these five were in process of closing their business. Five have since closed, three by reason of insolvency. The new general law for the regulation of savings banks does not require them to report in July, as they have formerly done. The aggregate of assets of these institutions, as appeared from informal reports made to the Bank Department for the first of July last, was $336,308,236.43. Their deposits amounted to $316,335,617.82, belonging to 891,992 depositors as represented by the number of open accounts on that date. The increase in deposits during the six months ending July 1, last, was upwards of twelve millions of dollars, and the number of depositors or open accounts, increased, during the same time, 19,494. The total increase in deposits during the year 1874, was $18,415,564, and, in the number of depositors, 33,026. The aggregate of assets as shown above, for July last, was not made up in the same manner as that for January 1, last, therefore such aggregate cannot be used for the purpose of comparison. The estimated amount of such assets, on the first of July last, may, however, be stated at three hundred and forty millions of dollars.

RECOMMENDATION AS TO SAVINGS BANKS.

It will be observed that the number of depositors in the Savings Banks in this State is larger than the number of electors who have ever voted at an election; and that the aggregate of their deposits is more than one-eighth of the assessed valuation of all real and personal property.

In view of the fact that these are the savings of the industrious poor, who are less able to assert and protect their own interests than any other class of holders of such vast amounts of property, it is an especial duty in our legislation to shield them from injustice. The absolute safety of their deposits is an incentive to make savings, which is an important object of public policy.

Frequent reports by these institutions should be required. The provisions regulating the character of their investments should be revised with a view to secure greater safety. New guards should be instituted against the tendency of administration to fall into favoritism toward the officers, sure to prove dangerous to the trust; and it should be inquired, in view of the recent and numerous failures, what defects may be shown to exist in the present law, and whether further penalties, in respect to maladministration, can be provided.

I commend the subject to your consideration.

TRUST, LOAN AND INDEMNITY COMPANIES.

There were eleven trust, loan and indemnity companies reporting to the Bank Department, July 1 last, one having closed its business during the year preceding. A new trust company began business Sept. 1, 1875, whose capital is not included in the summary. The aggregate capital of these corporations, paid in, as shown by their reports, was $11,584,475. The total amount of their assets was $69,654,948 and the amount due from them to their depositors was $50,365,569.

The estimated amounts of assets, held July 1, by banks, savings banks, trust, loan and indemnity companies, was

$520,000,000. The amount due to their depositors was, approximately, $432,000,000; and their profits, including surplus fund, may be estimated at $39,000,000.

INSURANCE COMPANIES.

The number of insurance companies subject to the supervision of the Insurance Department, on the 19th day of November, 1875, was 281, as follows:

New York joint Stock Fire Insurance Companies..	102
New York Mutual Fire Insurance Companies.....	8
New York Marine Insurance Companies..........	9
New York Life Insurance Companies............	22
New York Plate Glass Insurance Company.......	1
Fire Insurance Companies of other States........	91
Marine Insurance Companies of other States.....	1
Life Insurance Companies of other States........	25
Casualty Insurance Companies of other States....	4
Canadian Fire Insurance Companies..............	3
Foreign Fire Insurance Companies...............	11
Foreign Marine Insurance Companies............	4
	281

The total amount of stocks and mortgages held by the Insurance Department for the protection of policy-holders of Fire, Life and Casualty Insurance Companies of this State and of foreign Insurance Companies doing business within it, was $11,036,053, as follows:

For protection of policy-holders in fire insurance companies of this State.............	$400,000
For protection of policy-holders generally in life insurance companies of this State....	3,790,091
For protection of registered policy-holders exclusively	3,184,542

For protection of casualty policy-holders exclusively	$1,000
For protection of plate glass policy-holders exclusively	50,000
For protection of fire policy-holders in insurance companies of other States	60,000
For protection of fire policy-holders in insurance companies of Canada	643,120
For protection of fire policy-holders in foreign insurance companies	2,604,300
For protection of life policy-holders in foreign insurance companies	303,000
Total deposit	$11,036,053

The assets of the life insurance companies of this State amount to nearly two hundred millions of dollars; the amount insured by them to one thousand millions; and their annual receipts to more than sixty millions. The magnitude of these sums, and the duration and fiduciary character of the engagements of these corporations, make it specially important that the interests of the policy-holders should be guarded with jealous care.

DEPRESSION IN BUSINESS.

It cannot be doubted that large classes of our people are suffering great inconvenience from the present state of trade and of manufacturing and mechanical industry, and from the decay of numerous enterprises. Few kinds of business have been recently carried on at a profit. Labor finds scanty employment even at reduced wages. Incomes are lessened or fail altogether. Many investments have become wholly or partially unremunerative. Property is shrinking, losing for the time its circulatory character, and becoming unavailable as a resource to pay debts or to raise money. It is not a convulsion, but a partial paralysis. There is nothing of what is called a pressure for money; there is no panic; but a fear to lend except on certain security; and a timidity in borrowing for new undertakings by most persons of prudence or credit.

CAUSES.

It is to be hoped that, amid these evils, the germs of a better future are springing up, to renew in their origin the elements of individual and social prosperity; but in the meantime attention is naturally drawn to the causes of a state of things which inflicts so much distress. Such seasons have recurred at intervals in the experience of this and other countries. They have usually been produced through the destruction of large masses of capital by wars, revolutions, conflagrations, or failure of crops, or by a temporary mania for bad investments, or by violent reactions of credit. The known facts of our recent business history leave no doubt as to the origin of the state of things we are now experiencing.

WASTE OF NATIONAL CAPITAL BY EXCESSIVE GOVERNMENTAL CONSUMPTION.

Eleven years ago our country emerged from a vast civil conflict, in which its aggregate wealth had been impaired to the extent of probably two thousand millions of dollars by a governmental consumption exceeding the whole net income of the people; to say nothing of the destruction of property, industries and productive capacities incident to military operations.

Never was it more necessary that peace should bring healing on its wings.

To replace the capital destroyed, to restore the elements of future natural growth, should have been the object of our policy. A prompt reduction of the enormous governmental expenditure was the first condition. A renewal of the industries of the great communities of the South, which produce so large a share of our exports and raw material, was of great importance. Energy, skill and economy in production, and frugality in private consumption, the wise conduct of business, and a judicious application of capital and labor were essential. These chief elements of private prosperity were dependent upon public conditions. They were to be promoted by sound government finance, by good methods of revenue,—not unduly swelling the cost of the taxes to those who pay them beyond their produce to the treasury; by a discreet management of our vast fiscal operations, and of the currency and of the banking system; by a sober and stable governmental policy—not stimulating to speculative adventures, not inciting miscalculations in business, not enhancing charges for services and risks in commercial transactions.

How complete these conditions have been reversed during the eleven years since the war,—appears in a retrospect of the actual events of that period.

Present Scale of Governmental Expenditure.

The extravagance of our governmental consumption is illustrated by a comparison of the public expenditures of 1870—five years after the close of the war—with those of 1860 and 1850.

Taxes in the United States.

	1850 Gold.	1860 Gold.	1870 Currency.
Federal	$40,000,000	$60,010,112	$450,000,000
State, county, city and town	43,000,000	94,186,746	280,591,521
	$83,000,000	$154,196,858	$730,591,521
Population	23,191,876	31,443,321	38,558,371

TAXES PER HEAD.

	1850	1860	1870
Federal	$1.72	$1.91	$11.67
Local	1.85	2.99	7.24
	$3.57	$4.90	$18.91

AGGREGATE TAXATION OF ELEVEN YEARS.

The aggregate federal taxation of the eleven years now closing computed, in currency, from the official statements, is more than $4,500,000,000. The local taxation, assuming the census statement for 1870 as an average, is more than $3,000,000,000. The aggregate taxation exceeds $7,500,000,000.

ITS RELATION TO NATIONAL SAVINGS.

The daily wants of the masses of mankind, even in the most productive and prosperous countries, press closely upon their daily earnings. It is only a small portion of their current income which they are able to save and to accumulate.

In Great Britain and Ireland, despite the wealth, which their people have long been storing up, especially in machinery and moneyed capital; despite the yearly influx of one hundred and fifty millions of dollars from interest on investments in other countries, the annual growth of wealth from the savings of all their people is not deemed by the best authorities to exceed six or seven hundred million dollars.

The accumulated wealth of the United States is the result of a shorter period of growth, and is less in amount. We have to pay to foreign creditors annually, in coin, more than $100,000,000. We are richer in the natural powers of the soil; and our labor is, on the whole, more efficient. We earn more, but have less disposition to save, and less of the habit of saving.

SUCH CONSUMPTION GREATLY EXCESSIVE.

A governmental consumption in every year, in bad as well as good years, must be considered greatly excessive when it amounts to a share of the national earnings larger than the whole people are able to save in prosperous times for all new investments; for erecting dwellings and other buildings; for improving farms, increasing the stock of live animals and of agricultural implements; for all manufacturing and mechanical constructions and machinery; for all warehouses and stores, and increased supplies of merchandise; for ships and steamers, and telegraph and railroads, and their equipments; for all objects which individual and corporate enterprise provide for the future, in the progress of a populous and rapidly growing community.

INCIDENTAL EVILS.

Such taxation is in itself a monstrous evil; and its incidents aggravate its direct injuries. When the exaction from the people was, as in 1860, one-quarter of its present amount per head, even if it were unscientific and unskilful in the levy, the mischief was comparatively inconsiderable. But with the quadruplication of the exaction, the difficulty of obtaining good methods of imposing it, is greatly increased; and the mischiefs of bad methods become well nigh intolerable.

When governments take from the people for official expenditure, nearly all the surplus earnings of individuals, science and skill in the art of taxation become necessary,—necessary to preserve and enlarge the revenue — necessary to gild the infliction to the taxpayers. Our present situation is that we have more than European burdens, as seen in the most costly governments of the richest of modern nations supporting immense navies and armies and public debts; and to these burdens we have enjoined an ignorance and incompetency in dealing with them, which is peculiarly our own. We have not yet acquired the arts belonging to a system which the founders of American government warned us against, and fondly believed would never exist in this country.

SACRIFICE CAUSED BY UNSKILFUL MODES OF TAXATION.

The consequence is that the pecuniary sacrifices of the people are not to be measured by the receipts into the treasury. They are vastly greater. A tax that starts in its career by disturbing the natural courses of private industry, and impairing the productive power of labor, and then comes to the consumer, distended by profits of successive intermediaries, and by insurance against the risks of a fickle or uncertain governmental policy, and of a fluctuating governmental standard of value,— blights human well being at every step. When it reaches the hapless child of toil, who buys his bread by the single loaf, and his fuel by the basket, it devours his earnings and inflicts starvation.

A GOVERNMENTAL CLASS OF TAX CONSUMERS.

Another evil of such a system of excessive taxation is, that it creates and nourishes a governmental class — with tendencies to lessen services and to enlarge compensation, to multiply retainers, to invent jobs and foster all forms of expenditure,— tendencies unrestrained by the watchful eye and firm hand of personal interest, which alone enable private business to be carried on successfully. In other countries such a class has found itself able, sometimes by its own influence, and sometimes in alliance with the army, to rule the unorganized masses.

In our country it has become a great power, acting on the elections by all the methods of organization, of propagating opinion, of influence, and of corruption. The system, like every living thing, struggles to perpetuate its own existence.

Every useful and necessary governmental service, at a proper cost, is productive labor. Every excess beyond that, so far as it is saved by the official, merely transfers to him what belongs to the people. So far as such excess is consumed, it is a waste of capital, as absolute as if wheat of equal value were destroyed by fire or gold were sunk in the ocean.

WASTE LARGER THAN NATIONAL DEBT.

Probably such waste by governmental expenditure in the eleven years since the war amounts to, at least, as much as our present national debt.

MISGOVERNMENT IN THE SOUTH.

It cannot be doubted that the systematic and extreme misgovernment imposed on the States of the South, has greatly detracted from our national prosperity. In those impoverished communities, it has not stopped with the ordinary effects of ignorant and dishonest administration. It has inflicted upon them enormous issues of fraudulent bonds, the scanty avails of which were wasted or stolen, and the existence of which is a public discredit, tending to bankruptcy or repudiation. Its taxes, generally oppressive, in some instances have confiscated the entire income of property, and totally destroyed the marketable value.

ITS EFFECTS.

In a region five times as large as the British Isles and three times as large as France, abounding in all the elements of natural wealth, it has destroyed confidence and credit in all transactions, diffused uncertainty and distrust everywhere, and consumed existing capital, while retarding production and paralyzing the enterprise by which such waste might be repaired and future growth assured.

HOW IT IS MAINTAINED.

This system, after its character became known to us as well as to those directly affected, abhorred by all the intellect and virtue of the communities in which it exists, and by their public opinion, has been maintained through long years by the favor and patronage of the federal government — by the moral coercion of its prestige — by the standing menace and occasional exercise of its military power.

INJURY TO OUR OWN PROSPERITY.

It is impossible that such wrongs should not re-act upon us. The immediate sufferers by it are the producers of four-tenths of the exported commodities, excluding specie, of our whole forty millions of people, and of the most important raw materials of our own domestic manufactures. They are agricultural communities, which more than any others sell what they produce and buy what they consume. They are our most valuable customers for the products of our own industries and for our merchandise; and they make us factors in all their transactions. The State of New York, which contains the commercial metropolis, receives the largest injury — but its consequences extend throughout the whole country.

EXCESSIVE SPECULATION.

Other influences have been at work to deteriorate the financial condition of our people. The period has been full of tendencies to unsoundness in the management of private business, and in the habits of families and individuals.

A series of speculative excitements has incited to enterprises which have turned out to be unremunerative, and to investments which fail to yield revenue and have lost their salable value. The capital embarked in such undertakings is destroyed. Large classes find their incomes diminished, and their convertible property reduced.

OVERTRADING.

Even the operations of regular business partook of the spirit of the times, and became too much expanded. Profits which came in part from the swelling of nominal prices, tempted those who were unexpectedly enriched to count on their continuance, and to enlarge their undertakings or engagements under that illusion.

One who had half his capital invested in land and buildings and machinery, which is called fixed capital—and half invested in raw materials and funds to employ workmen, which is called circulating capital, and was doing a safe and easy business, was induced, for the purpose of enlarging that business, to double his investment in fixed forms. He, therefore, needed double the circulating capital; and instead of owning it all, had to borrow it all. The turn of the times disabled him from selling an enlarged product, or perhaps even an equal product, or of selling without loss; and when he needed loans to double the amount of his former floating capital in order to carry on his business and more in order to hold his product for a revival of the market—he found that lenders had become timid.

Another discovered that an enterprise which may be good takes longer to bring returns than he anticipated.

Another began when credit was easy and failed to foresee how changeable that condition is; and, even though his hopes of profit were undiminished, found it difficult to carry his loans.

EFFECTS GENERAL.

When large classes suffer under the effects of these miscalculations, the influence will extend, more or less, to nearly all the community.

A period of falling prices following a period of rising prices generates such results. Great fluctuations in the hopes and opinion of the public, creating vicissitudes of credit, are the secondary cause, as they are themselves the results of some primary cause.

EXAGGERATED COST OF MIDDLEMEN.

An outgrowth of the same morbid condition is the unusual and unreasonable disparity now existing between the wholesale price which the producer receives, and the retail price which the consumer pays. No doubt prolonged fluctuation in prices tends during the upward movement to increase the charges of middlemen, and to enlarge the class. But the root of the evil is the uncertainty and instability. The importer adds to the price of every article he imports, the exporter reduces the price he pays for every article he exports; as insurance against the possible variation in the value of greenbacks when converted into the money of the world, and against the possible changes of governmental policy at Washington.

Nor can it be doubted that the condition of things has been unfavorable to economy and efficiency in the management of business, to frugality in private expenditure and to energy in production.

Such are the immediate causes which have occasioned excessive and unnatural consumption of our national capital, and which have retarded the natural processes of repair and growth during the last eleven years.

What are the ultimate causes, and what are the remedies?

NEW YORK'S INTEREST IN THESE QUESTIONS.

To the people of this State these are interesting inquiries. In 1874 our State tax was nearly $16,000,000. Our local taxes were over $42,000,000. Our share of the taxes of the federal government, on the average of eleven years, if computed on population, would exceed $50,000,000, or if computed on consumption, according to the estimate of the Finance Committee of the Constitutional Convention of 1867, would for the year exceed $80,000,000.

ACTION OF FEDERAL GOVERNMENT THE ULTIMATE CAUSE.

The federal government has the direct and exclusive responsibility for its own immense expenditure, and for its calamitous policy in respect to the great producing States of the South.

It has likewise controlled the currency and the banking of the country. It has been the principal dealer in the precious metals. It has conducted vast fiscal transactions. Its financial secretary has held in his hand from day to day the supply and the rates of the loan market in the centre of capital and commerce — the terms of our foreign exchanges — the prices of exports and imports — the quality of the circulating medium — the fluctuating standard of values recognized by law as the rule in all dealings and all contracts.

By the force of its example; by its ascendency over opinion acquired in a period of public danger, during which the people formed the habit of following its leadership; by its means of propagating the ideas according to which its own operations were conducted; by all these as well as by the direct effects of its action, its measures, and its policy, the federal government has, therefore, practically dominated over all business and all industries, and created conditions which shape the conduct of individuals in their production and consumption, and of local governments in their expenditures, taxation and creation of debt.

FALSE REMEDIES.

It is natural that such a condition of men's business affairs should be prolific of illusory and mischievous schemes for relief. A vague notion is extensively entertained that a new issue of legal tender notes would afford an effectual remedy. This fallacy is largely due to the false theory pervading nearly all the literature of political economy as to the agency which the quantity of the currency, even when equivalent to coin, has in causing cycles of high and low prices.

ERRONEOUS THEORY.

As high prices and expanded currency and low prices and contracted currency, have been usually found together, the effect has been mistaken for the cause. It is often assumed that the banks, even when redeeming their notes in coin, can expand their issues in excess of the needs of the community, and thereby originate and consummate a general and prolonged rise of prices.

ANALYSIS OF THE FACTS.

An analysis of the function of the convertible bank note, or of the processes by which cycles of high prices occur, will equally confute this opinion. A study of the order of the events which have happened in periods of rising prices in England and the United States, under a convertible currency — shows that usually the speculative movement at all stages, precedes the increase of bank-notes.

BANK NOTES AN INSIGNIFICANT PART OF CREDIT MACHINERY.

The convertible bank note is but a small portion of the instruments of credit used in a commercial country. It is adapted to the wants of persons who do not keep bank accounts, and the wants, in petty transactions, of those who do keep bank accounts. It bears no interest; and the holder has a motive to keep on hand only so much as he thinks he may require for expected or possible purchases or payments, and to invest or lend the surplus so that it will become productive.

If a bank lends its note to a borrower to make a payment or a purchase, the use for that purpose is but for an instant. Unless the note is received by or passed to some person who detains it for a future purpose, it immediately goes back to the issuer through the exchanges with other banks. It has to be redeemed by reducing other loans, or by a temporary loss of a portion of the usual reserve of the issuer. The life of a bank note is made up of a succession of instantaneous uses, alternating with a succession of prolonged detentions.

The quantity that will stay out at any given time depends mainly on the expectancy of individuals as to future transactions, and, in a lesser degree, on the state of prices, which vary the amount used in the same transaction. In times of rising speculation, the wants of the community absorb a larger quantity. Each transaction employs an amount enlarged in proportion to the enhanced prices; transactions become more frequent, and the detentions of the means of future transactions are increased by a greater disposition to make them, and less care to economize interest.

It is the competition of buyers which puts up prices in a period of speculation. Bank notes have infinitely less to do with originating speculation or even furnishing the means whereby it can be sustained, than the other parts of the machinery of credit.

Bank notes, or currency as they are called, are but an insignificant portion of the means of purchase or payment. The transactions effected by check, operating to transfer bank deposits, in the city of New York amount now in every eight days,— and some years ago amounted in every five days — to as large a sum as all the legal tenders and bank notes in the hands of the people of the whole United States. The payments effected at the London Clearing House amount in every two days to as much as the whole circulating medium of the United Kingdom. The other instruments of credit by which business is carried on — such as book accounts, notes of hand, bills of exchange, drafts, checks on bank deposits, are thus many times the volume of bank notes.

OTHER INSTRUMENTS OF CREDIT PREFERRED.

Speculative purchases are nearly always initiated by the use of personal credit. In such times confidence is high; credit is freely given and readily accepted. The transactions are generally made on book accounts or notes of hand. These are at the command of the buyers in unlimited amount, and without delay or inconvenience. Bank credits, called deposits — like bank notes — can be obtained only by borrowing. For such purposes bank notes are only used in small transactions, and to a comparatively insignificant extent.

BANK NOTES SLOW AND DIFFICULT OF INCREASE.

The issue of bank notes, if not limited to a fixed amount, is generally restrained by laws which require a deposit of securities with the government; and the process of issue is so slow and inconvenient that a sudden and large increase is not possible. Those that are in the hands of the public cannot easily be collected in large amounts, but are scattered in small sums among millions of holders throughout a continent.

CONCLUSION.

On the whole, then, it is demonstrable that bank notes, or currency when convertible, have less agency in originating or facilitating a general speculation, than any other portion oi the vast machinery of credit of which they form so inconsiderable a part. The false theory, that they are the master-cause of prices and fluctuations of prices, and that a governmental regulation of their volume will avert the tremendous vicissitudes in business to which commercial countries, carrying on vast credit transactions, are periodically subject, was the basis of the plan adopted in 1844, on the re-charter of the Bank of England. The theory was then seen, by a few of the best thinkers, to be destitute of truth. It has since been completely refuted by experience.

A PROLIFIC FALLACY.

In the infancy of the very modern science of political economy, a metaphor was accepted as an axiom. It was said that, if purchasers should suddenly find two gold coins for one in their pockets, they would pay double price for commodities. The proposition has no truth in it, except by assuming as a condition the result to be proved. It would not be true of any one buyer. It could not be true of all collectively, unless a fall in the value of gold had previously happened. The increased quantity could exist only as a consequence of an increased demand at the same value, or of a decline in the cost of production. In modern times, the increase in wealth and commerce is many fold the increase of population. The medium of exchange required is vastly larger than the accumulation of the precious metals; and an increased extension of credit machinery has become necessary. Bank notes, or other circulating credits, cost as much to all save the issuer, as an equal value in coin. They have to be paid for by all who use them.

If individuals prefer to use coin to even a small proportion of their ability, or to hold their savings or reserves in coin; if traders, commercial companies, and governments increase their reserved stocks of bullion to even a small percentage of the extension of their operations, the absorption would outrun the production of the precious metals, taking no account of the insatiable demand of the Asiatic nations.

PRICE NOT A RATIO TO QUANTITY.

The fact is that price is not a mathematical ratio to be computed like a logarithm. The variations of the market are estimated by reasoning beings on the best judgment they can form of the happening and the effect of future events. The laws of market or temporary price are different in every case. An excess of oranges which perish in a few days, or of artificial flowers which go out of fashion, is worthless. An excess of gold, which is indestructible and easy, cheap and safe to hold involves a loss of interest, at the lowest rate, for the period it is likely to remain on hand.

LAW OF DEPRECIATION OF INCONVERTIBLE CURRENCY.

The depreciation of our legal tender treasury notes, is not to be measured by any arithmetical formula. The law which governs it is the discount for interest until the probable time of payment, and for insurance against risk, as those two elements are estimated by the general judgment of investors. To create a demand for it, by receiving it in government transactions, or to reduce its supply below the demands created by law from individuals for use as legal tenders, is for the government to make an artificial market, which operates, so far forth, as a practical redemption.

HOW ISSUES OF LEGAL TENDERS INFLATED PRICES.

It is consistent with this reasoning to admit and assert that the issue of legal tender treasury notes, during the late civil war, exerted great power over prices. It acted on the public imagination in respect to future values. It excited great distrust that the government, instead of having recourse for its means of war expenditure to the vast mass of our national wealth by loans and taxes, resorted to a debasement of the comparatively insignificant fund of circulating credits, with which private business is carried on. It excited a grave sense of doubt how often, and to what extent, it might recur to so dangerous an expedient; great misgiving as to the time and the certainty of ultimate redemption. Under these influences, in the vicissitudes of military operations, the discount became large—touching, at its extreme point, 65 per cent. on the par value of the issues.

INFLUENCE OF OPINION AND IMAGINATION.

The human imagination seldom fails to exaggerate any desired or dreaded reality to which it looks forward, and it acts a great part in those cycles of ascending prices and descending prices which happen in highly commercial countries. The origin is, in some event creating an anticipation of a rise in the market value of one or more commodities, which extends as by contagion to others — or in an expectation of a general rise of prices. The upward movement sometimes continues for several years. The excitement begins with dealers for profit or speculation. The instruments of credit first brought into requisition are those which are commonly used by these classes. The small consumers are the last reached. Then bank-notes are expanded; and they generally continue to increase for some time after the downward turn of the speculation.

REACTION.

The reaction would take place by the mere exhaustion of the speculative impulse. Sometimes it does happen without any other cause. A speculative movement, when it ceases to go upward, can but fall. But often some special cause intervenes to precipitate the catastrophe.

CAUSES OF PRESENT REACTION.

In our present case, the most important cause of reaction is the immense waste of our capital, which has gone on in all the modes described, and especially by excessive governmental consumption. An accessory cause is the fall in prices of many of our staples, which are now produced in excess of the capacity of private consumption by an impoverished people. There are also moral causes acting on the public mind. A popular error existed that prices would not fall so long as the volume of legal tenders and bank notes continued undiminished. Many made their business calculations on that theory, and are disappointed and their confidence in their own opinions unsettled.

These special causes, in addition to the natural exhaustion of a fictitious excitement, broke the public illusions, which had been generated by false systems and false theories. A great change ensued in the opinion and feeling of the people, in confidence and credit, in the voluntary machinery of business, which expands and contracts according to the fluctuating temper and purposes of individuals. A corresponding fall of prices resulted.

CURRENCY EXPANSION FAILED TO STOP REACTION.

But the quantity of legal tenders and bank notes in the hands of the public had not been diminished. The quantity, excluding those held by the treasury and the banks, was larger at the crisis in September and October, 1873, than at any previous time. Yet the continuance of the volume of the currency — the enlargement of it, did not inflate prices — did not even stay the fall of prices.

MODERATE ISSUE FUTILE.

In such a state of facts, it is obvious how utterly futile to arrest; how more than futile to reverse the operation of these potent causes would be a new issue of any moderate quantity of legal tenders.

A sudden and unexpected deficiency of currency sometimes happens; and, before business can be adapted to the new condition, or can find a substitute in some other instrument of exchange, much temporary inconvenience may be felt.

Such a state of things — to which a new issue might be adapted — does not exist. On the contrary, there is assuredly an adequate supply of currency for the wants of business — and even a surplus. In eight years out of ten, the demand for from five to ten per cent. additional currency in the autumn to move the crops, creates what is called a "fall pinch." There was none in 1875. The surplus currency previously on hand more than provided for that special temporary demand. The banks continued to lend their balances on call at low rates. The tendency to reduce the circulation because of the lack of profitable employment is still manifest. The New York City banks reduced their outstanding notes, between 1873 and 1875, from $28,000,000 to less than $18,000,000.

WOULD NOT RELIEVE EMBARRASSMENT.

Nor would such an additional issue of legal tenders give any direct relief to embarrassed persons. The notes issued would have to be paid for. The difficulty with embarrassed persons is, that they have not available property to convert into currency. If they had the conversion could be as well effected with the existing mass of currency as after such a new issue.

Nor would any moderate issue of legal tenders have the least power to revive the condition of business through which we have passed; the condition of high and rising prices — of universal disposition to enlarge operations, undertake new enterprises, and enter into new speculations — of unsound confidence and reckless use of credit; a condition which imparted an apparent but fictitious prosperity to everything and everybody, and furnished an unnatural market for all property. Experience shows that, after such a state of business, a period follows, in which the opposite ideas and feelings prevail. Such is the case now. With all the agencies having real power to create such a condition of business, operating strongly in the contrary direction, the effort to reproduce that condition by an agency never capable of much effect, would be perfectly futile. If the treasury should pay out a moderate additional quantity of legal tenders, they would not go into circulation or act on prices. They would merely accumulate in the money centres and reduce the rate of call loans of bankers' balances.

INDEFINITE ISSUE WOULD, MODERATE ISSUE MIGHT, CAUSE DISASTER.

It would be only by a large issue, or the menace of a large or indefinite issue, that a decided effect on prices could be produced. That would create alarm of such an impending depreciation as to threaten creditors with a confiscation of their debts, and holders of currency with its loss; and they would hasten to exchange it for property. Any issue, which should act on the imagination, inciting wild estimates or wild fears of the future, might induce a speculative depreciation of the price of the currency and inflation of the prices of property.

The evil, even of a moderate issue, when the currency already exceeds the wants of business, and the increase cannot be pretended to be for any legitimate purpose, especially if the object of removing individual distress by creating fictitious prices be avowed, is that it strikes at the root of all confidence, and all credit. If the principle be once adopted, everybody will inquire how often such an expedient may be repeated, how far it may be carried.

An attempted expansion of the petty volume of the currency, under circumstances which cause a real contraction of the whole vaster volume of credit machinery, which fill all lenders with dismay, and which destroy public confidence, hope, and faith, that are the basis of credit systems and credit operations, is self destructive. It can be prolific of nothing but general disaster.

SOUND FINANCE DEMANDED.

The temper which now predominates among the people revolts at financial quackery. It is no longer susceptible to flattering illusions which have exploded amid the wrecks of individual fortunes and private prosperity. It is excessively incredulous. It demands sound measures, such as commend themselves to the judgment of the best intellects and the best experience.

SPECIE PAYMENTS WITHOUT CONVULSION.

After eleven years of convulsion, without a restoration of specie payments, it now claims a restoration of specie payments without a convulsion. The problem does not seem difficult. Resumption by the government will accomplish completely resumption by the banks. The treasury has only, by gradual and prudent measures, to provide for the payment of such portion of the outstanding treasury notes as the public, not wishing to retain for use, will return upon it for redemption. The sum required in coin, if the preparations be wisely conducted so as to secure public confidence, will be what is necessary to replace the fractional currency and to supply such individuals as prefer coin to paper for their little stores of money; and also what is necessary to constitute a central reservoir of reserves against the fluctuations of international balances and for the banks. To amass a sufficient quantity by intercepting from the current of precious metals flowing out of this country, and by acquiring from the stocks which exist abroad, without disturbing the equilibrium of foreign money markets, is a result to be worked out by a study of all the conditions, and the elements to fulfil those conditions, and by the execution of the plans adopted, with practical skill and judgment. Redemption, beyond this provision of coin, can be effected as other business payments are effected; or in any method which converts investments without interest into investments upon interest, on terms the holder will accept; and by such measures as would keep the aggregate amount of the currency self-adjusting during all the process, without creating, at any time, an artificial scarcity, and without exciting the public imagination with alarms which impair confidence, contract the whole large machinery of credit and disturb the natural operations of business. The best resource for redemption, is that furnished by public economies; for it creates no new charge upon the people; and a stronger public credit is certain to result from sounder finance, and will reduce the annual cost of the national debt.[14]

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[14] The Legislature in March, 1876, adopted the following concurrent resolution relative to specie payments:

"WHEREAS, The commercial and industrial interests of the country require a settled, steady and uniform financial policy on the part of the Government; and,

"WHEREAS, The public honor, credit and safety, as well as the restoration

EXAMPLE OF FRANCE.

These opinions, deduced from reason, are confirmed, in a recent example, by experience. France, in her ten months' contest with Germany, incurred a war expenditure of one thousand million of dollars in specie values; and in the twenty-eight months following the peace, paid an indemnity of one thousand million of dollars in specie, or its equivalent, to a foreign country. These great operations were carried on without causing a depreciation of the currency beyond two and one-half per cent. at its extreme point; and without disturbing the general business or industry of the people.

OUR GREAT NECESSITY.

What is most needed now is that the public mind be reassured by a wise, safe and healing policy. The dread of imaginary evils ascribed to the methods assumed to be necessary to restore specie payments, is more mischievous than the reality, wisely pursued, ought to be. As soon as the apprehensions of an impending fall of values is removed, manufacturing and mechanical industries will start anew, dealers will buy, for future consumption, enterprises that commend themselves to the sober judgment of investors will be undertaken, and capital, which now accepts any low rate of interest, where there is no risk, but is withheld from operations of average character, will be lent on reasonable conditions.

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of commercial confidence and prosperity, demand that this policy, by gradual and prudent steps towards the resumption of specie payments, shall establish a sound and stable currency, based upon the world's standard of coin; and,

"WHEREAS, The act of Congress, approved January fourteen, eighteen hundred and seventy-five, provides for and pledges the Government to a resumption of specie payments on the first of January, eighteen hundred and seventy-nine; therefore,

Resolved, That our Senators and Representatives in Congress be requested to oppose any repeal of the said resumption act of January fourteenth, eighteen hundred and seventy-five, and that they be also requested to favor such further legislation as may be needed to give full faith and force to the pledge contained in said act, and thereby to ensure the permanent restoration of specie payments."

TRUE REMEDIES.

But the remedies for the evils now felt by the people in their business and industries must extend beyond any measures merely relating to the currency. They must be broader and deeper. They must begin with a prompt and large reduction in governmental expenditures and taxation, which shall leave in the hands that earn it a larger share of the result of labor. They must proceed by withdrawing, as much as possible, governmental interferences that cripple the industries of the people. They must be consummated with an increased efficiency and economy in the conduct of business and in the processes of production, and by a more rigorous frugality in private consumption. A period of self-denial will replace what has been wasted.

We must build up a new prosperity upon the old foundations of American self-government; carry back our political systems towards the ideals of their authors; make governmental institutions simple, frugal,— meddling little with the private concerns of individuals,— aiming at fraternity among ourselves and peace abroad,— and trusting to the people to work out their own prosperity and happiness. All the elements of national growth and private felicity exist in our country in an abundance which Providence has vouchsafed to no other people. What we need to do is to rescue them from governmental folly and rapacity.

SAMUEL J. TILDEN.

SPECIAL MESSAGES.

January 6. To the Assembly: Transmitting a statement of the pardons, commutations and reprieves during the year 1875.

January 12. To the Assembly: Transmitting the annual report of the Captain of the Port of New York.

January 18. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *January* 18, 1876.

"In answer to the resolution of the Senate requesting the Governor 'at the earliest possible day, consistent with the public service, to communicate to the legislature the results of the investigations thus far obtained by the commission, with the testimony thereto pertaining, and the titles and objects of the actions now pending, with the progress thereon made, and the names of the officials charged with complicity or connivance as aforesaid, in order that the legislature may, in view of the information thus furnished, determine what appropriation, if any, or other measures of legislation may be necessary,' I have the honor respectfully to state:

1. That the concurrent resolution authorizing the Governor to appoint a commission to investigate canal affairs, passed in 1875, requires the said commission to report the testimony they shall take, together with such recommendations, in respect to the same as they shall deem warranted by the facts to the Governor and to the Legislature at the opening of the next session.

The commission have made a series of reports to the Governor, 12 in number, on special cases, and I understand, are preparing with all diligence a general report to the Legislature in compliance with the concurrent resolution, which will embrace 'all the results thus far obtained by the commission.'

2. The several reports of the commission to the Governor have been, from time to time, transmitted to the office of the Attorney General for his consideration as to what legal remedies in behalf of the State should be instituted. The conduct of such actions is devolved by law upon the Attorney General. The present incumbent, as the Senate is doubtless aware, from the day of his taking

office was engaged at the Oyer and Terminer of Erie county in the trial of one of the cases arising out of a report of the commission until a week after the adoption of your resolution. For particular information on the subject of this part of your inquiry, I respectfully refer you to that officer.

In the passage of my annual message referred to by your resolution, I expressed the opinion that the object of primary and transcendent importance in the measures connected with the administration of canals is 'to reform the system and to establish every possible security against the recurrence of the evils.'

This object is to be attained by an exposure of the wrongs, by appropriate measures of legislation to prevent and punish similar wrongs hereafter, by the enforcement of existing laws imposing penalties upon the wrong-doers, and, as far as possible, by compelling restitution. Even in the narrow sense of pecuniary advantage to the people, infinitely more is accomplished by breaking up the system than can be hoped to be recovered in civil action. If adequate proofs could always be had, complete restitution cannot always be effected; still less full damages for wastes committed to enable the illicit profits to be gained which are often much larger than those profits. The expenditures in jobs connected with the canals have averaged from two to three millions of dollars annually. Nearly the whole of this amount can be saved to the treasury or left in the pockets of the taxpayers without detriment to any public interest. For the present fiscal year that saving has been accomplished irrespective of any litigations in the courts. There is no reason why the same saving should not be effected hereafter.

The indictment, trial and conviction of persons who have committed criminal offenses under existing laws have, for their object, the general purpose of remedial justice by deterring, in the future, from the commission of similar offenses. Civil actions by the State, while they have an incidental effect of the same nature, have the further and their main object of compelling restitution of the public money unlawfully taken.

Indictments, since the law of 1873, can be found at any time within five years of the time of the commission of the offense. Civil actions by the State, for the recovery of money in such cases, can, under the laws of 1875, be brought at any time within ten years after the cause of action occurred.

The investigations of the commission, faithful and laborious as they have been, leave unexplored far more than has been brought to light.

Official bodies like the canal board and the commissioners of the canal fund, ought to be clothed, as permanent standing authorities, with full powers of investigation, in their respective spheres, as to all wrongs done in respect to public moneys or property. The Comptroller, as the general fiscal representative of the State, and perhaps other public officers ought to be vested with similar powers.

It is quite manifest that it would overtask the powers of any one man to conduct the criminal and civil actions that have been and ought to be instituted for these objects. Vast sums stolen from the treasury will be, as in similar cases they have been, employed in securing extraordinary service in legal ability, in professional experts and in indefatigable activity to defend, by every technical artifice, the unjust possession. There is no force of detectives connected with the office of the Attorney General; neither are the district attorneys his subordinates.

The Attorney General of the United States, on the other hand, has all of the district attorneys and all of the marshals and deputy-marshals, besides a large number of skilled experts, perfectly at his command; and Congress every year makes a sufficient appropriation to meet whatever expenses may be necessary in the preparation of suits for trial.

The actions growing out of canal frauds involve the examination of complicated facts relating to construction, and the quality and utility and value of the work; and they cannot be properly prepared or tried without the assistance of experts.

It has been usual to make a small annual appropriation to enable the Attorney General to employ counsel to assist him in the discharge of his official duties. The suggestion in my annual message, that the ordinary appropriation would be insufficient, but that a ' special ' appropriation would be necessary to enable him to enforce the rights of the State and to meet the just expectations of the people, had reference to the expenses necessary for preparing these suits for trial, and for conducting these trials. [See notes 2 and 3.]

SAMUEL J. TILDEN."

January 25. To the Senate: Transmitting the report of the receipts and expenditures of the Cooper Union for the Advancement of Science and Art.

March 1. To the Senate: Transmitting the report of the Sailors Snug Harbor.

March 8. To the Senate: Transmitting a resolution adopted by the Legislature of Pennsylvania, complaining of an "alleged unjust discrimination against the owners and navigators of canal boats and barges, plying between places in the State of Pennsylvania, and points upon the public waters of this State." The discrimination was based upon chapter 320, L. 1872, under the operation of which it was alleged that canal boats and barges coming to New York or Brooklyn from Pennsylvania were charged a wharfage tax of $.02 a ton, while similar craft plying on the canals and rivers of New York were charged only $.01 per ton.

March 14. To the Assembly:

Veto of a bill, entitled "An act to provide for the employment of convicts and paupers under the control of the commissioners of public charities and correction of the city and county of New York."

"This bill commands the Commissioners of Charities and Correction for the city of New York to furnish employment to 'every able-bodied convict or pauper confined in the institutions under their care,' who cannot be employed 'to advantage or profit' in getting out stone, cultivating grounds or manufacturing for the use of said departments, with such mechanical or other labor as 'will yield the greatest revenue to the departments,' and enable him to be kept constantly employed during the term of his imprisonment.

This provision does not merely confer authority on the commissioners, it is mandatory. It contains no qualification. It allows no discretion. The rule in respect to the choice of industries in which the convicts and paupers are to be employed is absolute. The work to be carried on is that which will 'yield the greatest revenue.' The theoretical principle of political economy in respect to private business, which — to the honor of humanity — is qualified and tempered in practice — remorseless competition for the greatest profit, is enacted as the law in the selection of the industries to be followed. Unless the legal effect of this enactment is qualified by the last clause of this same section, any intentional deviation — any conscious deviation from this rule by the commissioners would be itself a misdemeanor. It would expose the commissioners to a liability to take their places with the convict portion of the persons under their care. It is true that an amendment was added to this section by the Senate, making it also the duty of the commissioners, 'so far as in their judgment' may be practicably and advantageously done, to take those industries and such a diversity of them as may 'tend least to conflict with the interests of free industries and trades in the said city and county.'

Under the established principle of construing the parts of a statute so that they will all stand together, it is probable that this clause would be ineffectual to modify the operation of the rule laid down in the former part of the section. Even the authority to prefer the industries which 'tend least to conflict' is limited to cases in which it may be 'advantageously' done. Could it be 'advantageous' to choose industries which would yield less profit than others? Nor does this provision apply in favor of the industries of Brooklyn or any other part of the State than the city of New York. The chief significance of this clause is the apparent expression of distrust by the Legislature, and of a disposition to qualify the main provision of the section.

The second section of the bill appears to be intended to enlarge the powers of the commissioners to embark in manufacturing on account of the city corporation, which is itself a questionable experiment in view of the results of all business enterprises heretofore undertaken by the public authorities; and is only to be sanctioned after the greatest consideration, and with the most careful guards against the mischiefs which have been engendered in similar cases.

Other provisions of the bill are imperfect, uncertain and improvident. For instance, the clause prohibiting the commissioners from entering into any 'contract by which they shall, in any manner, relinquish the control, support and discipline of the said paupers and convicts'— though probably not intended to have such an effect — may conflict with the humane provisions of the act of last year, 'for the better care of paupers and destitute children.'

It is desirable to make the prisons and alms-houses of the city of New York to contribute as much to their own support as they can, consistently with their objects, and with the welfare of all classes of our citizens, and no doubt the occupation of their inmates in work tends to discipline, to health and to reformation. The problem is, how to attain these salutary ends without injuring the interests, or wounding the just self-esteem or the honorable sentiments of the skilled artizans and workingmen who are the strength of a State, who have made American labor, on the whole, more efficient than any other in the processes of production, and have conferred on our country the renown of its achievements. The best solution of this problem is worthy of the most patient and considerate thought, and of continuous effort. A constitutional amendment changing the system of administration of the State prisons passed both houses last year and is now pending.[e] The State Board of Charities are addressing their best faculties to their beneficent work. A special investigation of the subject of pauperism was recommended in my annual message and is under your consideration. In the present depressed state of business — when scarcely any industry is remunerative, even with the advantages of being long established and of having private supervision and management — it is not likely that any new business enterprise or speculation carried on by the public officers would have immediate results in profits to the treasury.

Nor is it to be overlooked that unexampled distress from the want of remunerative employment exists among the mechanics and workingmen of the city of New York.

If government may maintain an organized system of relief for paupers, it may at least exercise forbearance in a period of business disaster toward those who are struggling with difficulties that tend to swell the class to which such relief is given. It can abstain not only from actual injury but from holding up to their imagination the specter of a new governmental competition; from rash and experimental changes in the system and laws to which the people are accustomed; from inconsiderate or imperfect measures, the effects of which cannot be foreseen or completely understood. In the meantime a real and vast reduction of the burden of taxation can be secured in other methods, for the support of which all classes and interests may be expected to co-operate. The reform of the canal expenditures of itself will save more than a million of dollars a year to the taxpayers of the metropolis. That measure is the example of a liberal policy toward the boatmen and transporters in a reduction of tolls made coincidentally with a far larger remission of taxes, and a harmonious co-operation of both classes to secure the reform. The policy which I had the honor to recommend to the Legislature at the opening of the present session, if adopted and faithfully carried out, will secure to the taxpayers of the city of New York a remission of taxes in 1876 as compared with 1874, of four millions of dollars, or about one-half of the entire taxes of the city for State purposes. In such prospects of being themselves relieved and in such necessity of general co-operation, the taxpayers of a community like the city of New York cannot afford to turn only the sacrificial side of public retrenchments to the mechanics and workingmen who really bear in indirect forms their full share of the taxes, but who, because they do not pay directly, too often fail to recognize the full benefits to themselves of the policy which reduces such burdens."

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[e] Const. 1846, art. 5, § 4, am. 1876.

The bill was not passed over the veto.

March 16. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *March* 16, 1876.

"I have received the following resolution adopted on the 7th instant, viz:

'*Whereas,* A vacancy occurred in the office of judge of the marine court of the city of New York, by reason of the decease of Alexander Spaulding, late one of the judges of said court; and,

'*Whereas,* One James P. Sinnott has, since the happening of such vacancy, said to have been appointed judge of said marine court by the Governor; therefore,

'*Resolved,* That His Excellency the Governor be and he is hereby respectfully requested to communicate to the Senate what action he has taken in respect to such appointment, and by what authority of law, if any, he has acted in the premises.'

In reply to these inquiries, I have the honor to inform the Senate:

FIRST. James P. Sinnott has been duly appointed to execute the duties of the office of justice of the marine court in the place of Alexander Spaulding, deceased, until the vacancy caused by the death of the said Spaulding shall be filled by election, in conformity to the Constitution and laws.

SECOND. The law under which the said appointment was made, is chapter 218 of the Laws of 1849, entitled 'An act to provide for filling vacancies in office,' passed February 3, 1849, (as amended by chapter 335 of the Laws of 1867), which provides as follows:

'§ 1. Whenever vacancies shall exist or shall occur in any of the offices of this State, where no provision is now made by law for filling the same, the Governor shall appoint some suitable person who may be eligible to the office so vacant or to become vacant, to execute the duties thereof until the commencement of the political year next succeeding the first annual election after the happening of the vacancy at which such officer could be, by law, elected; and the person so appointed to fill such vacancy shall possess all the rights and powers, and be subject to all the liabilities, duties and obligations of such officer, as they are now or may hereafter be prescribed by law.'

The Constitution of 1846 abolished the system of an appointed judiciary, and provided for electing certain judicial officers as follows:

'All judicial officers of cities and villages, and all such judicial officers as may be created therein by law, shall be elected at such times and in such manner as the Legislature may direct.' (Const. art. 6, § 18.)

The first act in relation to the marine court passed under this Constitution, was chapter 144 of the Laws of 1849, passed March 27, 1849, which provided for the election of two justices for the term of four years. The provision in respect to filling vacancies was as follows:

'In case of the death or resignation or vacancy arising from any other cause, of either of said justices or clerk, the Board of Supervisors of said city shall immediately appoint some suitable person to fill the residue of the term thus vacant.' (§ 3.)

The next act in relation to the marine court material to be considered here, is chapter 389 of the Laws of 1852, entitled 'An act in relation to the marine court of the city of New York,' passed in pursuance of the mandate of the Constitution before recited, which provided that three judges of the marine court of the city of New York should be elected (§ 1); that the justices so elected should, immediately after the votes were counted, be classified by lot (§ 2); and that vacancies should be filled as follows:

'§ 3. After the expiration of the terms of office under such classification, the terms of office of all the justices of the marine court shall be six years, and one justice shall be elected at the expiration of every two years; and any vacancy occurring in the offices created by this chapter shall be filled in the manner prescribed by law for filling vacancies in the offices of the justices of the superior court of the city of New York.'

This act was passed on the 17th day of April, 1852, and expressly repealed all former acts and parts of acts inconsistent with it. (§ 12.) The question is, what was 'the manner prescribed by law' for filling vacancies in the office of justice of the superior court when this act took effect. That manner, whatever it may have been, was adopted by this act for the purpose of filling vacancies in the marine court.

Chapter 255 of the Laws of 1847, entitled 'An act in relation to the superior court and the court of common pleas in and for the city and county of New York,' contains the following provision for filling vacancies:

'§ 5. At the general election next preceding the time at which the term of office of any such justice or judge shall then expire, there shall be an election to fill such vacancy; and if a vacancy shall occur at any time in the office of any such justice or judge, before his term shall have expired, by death, resignation, removal or otherwise, then such vacancy shall be filled for the residue of the unexpired term, at the next general election after the vacancy shall occur.'

There are three classes of vacancies: First, Those made by the expiration of the term, in which case an election for the full term fills the vacancy; second, a vacancy created by death, resignation, removal or other cause, before the term has expired, in which case the vacancy is said to be filled by election, at the next general election, for the residue of the unexpired term; and, third, a vacancy, previously unknown to the Constitution and laws, resulting from the adoption of the elective system — that is, a vacancy for the fractional part of the unexpired term between the happening of the event creating the vacancy and the commencement of the political year next succeeding the first annual election thereafter.

The act of 1847, relating to the Superior Court, provided for the filling of the first two classes of vacancies, but made no provision for filling the third class. Except for the general statute providing for the filling of vacancies for fractional periods, necessarily intervening before an election could be had and the person chosen could enter upon his office, our laws would leave this fractional period wholly unfilled.

For the express purpose of avoiding this result, growing out of the elective system, the Constitution which established that system ordained as follows:

'The Legislature shall provide for filling vacancies in office, and, in case of elective officers, no person appointed to fill a vacancy shall hold his office, by virtue of such appointment, longer than the commencement of the political year next succeeding the first annual election after the happening of the vacancy.' (Art. 10, § 5.)

In obedience to this mandate, the Legislature passed the general law first above cited, enacting that, in all cases not expressly provided for, the Governor should appoint.

There was, in 1852, no other provision of law for the filling of these fractional vacancies in the Superior Court. The provision of the act of 1828, establishing the Marine Court (chap. 137) in which the word 'vacancy' occurred, had no application, and had ceased to be in force for any purpose whatever. That provision was a mere incident to a system that had been swept away by the new Constitution. The only vacancy that it contemplated was a vacancy for a full term, to be filled by an appointment for a full term — an appointment in direct violation of the Constitution of 1846. But, besides this, the act of 1828 had been superseded and repealed by the act of 1849, which provided that all vacancies should be filled by the board of supervisors, and which, in express terms, repealed 'so much of all acts and parts of acts heretofore passed as shall be inconsistent with the provisions of this act.' (§ 16.)

The question has been raised as to whether the words in the act of 1852, relating to the Marine Court, 'in the manner prescribed by law for filling vacancies in the office of justices of the Superior Court,' relate to the manner at that time prescribed by then existing laws, or relate to such manner as might be prescribed by future laws and future constitutions. This is not a question about which there can be the slightest possibility of doubt. A statute referring to other laws will be held to mean laws then in existence, unless a contrary meaning is expressed. But in no case could that statute, in the phrase ' prescribed by law,' be supposed to mean a constitutional amendment adopted seventeen years afterward. The words ' prescribed by law ' are, in this case, equivalent to ' prescribed by the Legislature.' This act was passed under the Constitution of 1846, and this Constitution devolved upon the Legislature the duty of providing for vacancies in office. And the word ' Constitution,' in our system, is habitually used in contradistinction to the word ' law.' We speak of ' the Constitution ' and the ' laws ' in common parlance.

There is nothing in the language of the act of 1852 to countenance a construction which would make that act shifting and ambulatory in attendance upon all future laws and constitutions affecting a court with which it had no connection, for it must be remembered that in 1852 the Marine Court and the Superior Court bore no relation to each other which could make it probable that the Legislature of that year wished to make the mode of filling vacancies in the one follow future changes of laws and constitutions in respect to the other. At any rate, that Legislature failed to say so, and we must obey the law, so long as it stands, according to the principles of construction universally accepted in our jurisprudence.

It may be proper to add that a question of this character was recently adjudicated by Judge Hamilton W. Robinson, of the Court of Common Pleas, and decided in accordance with these views, and that his decision was affirmed on appeal to the General term of that court.

In conclusion, I may be permitted to add that it would have been perfectly agreeable to me to have submitted this appointment to the Senate, if I could have done so without committing the solecism of inviting a co-ordinate branch of the government, to which I owe, by duty and by inclination, every official comity, to assume a function in a case of which the Constitution and the laws give it no jurisdiction, and in which its action, whatever it might be, would be totally void. The Constitution and the laws cast on me the obligation to decide, in the first instance, whether it is my duty to appoint or to nominate to the Senate, and in doing so in this case I have simply endeavored to obey the law.

SAMUEL J. TILDEN."

March 24. To the Senate:

" EXECUTIVE CHAMBER,
ALBANY, *March* 24, 1876.

" I have the honor to transmit herewith a communication from the Superintendent of the United States Coast Survey, requesting the passage of a law for the protection of the signals and stations of that survey, and for the settlement of claims for damage done to private property during the progress of the work.

SAMUEL J. TILDEN."

For communication see Senate Document No. 61.

March 24. To the Legislature:

" EXECUTIVE CHAMBER,
ALBANY, *March* 24, 1876.

" The results of the investigations, ordered at the last session, into the work on the Erie and other canals, purporting to be improvements and known in the language of our legislation as ' extraordinary repairs,' have been submitted to you; they establish these conclusions:

FIRST. The expenditures for these purposes, during the last five years, were directly about $11,000,000, and indirectly, about $3,000,000, making $14,000,000; and involved taxation amounting to nearly $15,000,000. This is in addition to vast sums expended in former years.

SECOND. The mass of work, for which these expenditures were made, was of no real utility to the public. The waste in construction, which furnished jobs to contractors, but was of no value to the State, has been even larger than the illicit and fraudulent gains.

THIRD. Most of the contracts were obtained by the system of unbalanced bids and other dishonest devices.

FOURTH. Much of the work was executed in violation of the contracts, and is useless.

The advantages to the State of the investigations have not been limited to the discovery of the particular frauds, nor even to the destruction of a system involving a vast annual loss to the taxpayers, demoralizing to the public service and corrupting to all governmental life. Incidentally, in arresting these practices, a fund has been rescued from spoliation out of which a real important and valuable improvement can be effected in the main trunks of the canals.

On the first of last month there remained, as nearly as I can ascertain, of the funds applicable to extraordinary repairs and new work:

Unappropriated to specific objects		$633,000
Existing appropriations for objects not under contract		360,000
Estimated as necessary to settle existing contracts:		
Erie Canal	$347,000	
Champlain canal	30,000	
Oneida Lake canal	6,000	
	$383,000	
Balance after settling contracts as proposed		300,000
Sum available for new work on Champlain canal enlargement		270,000
Oneida lake		41,000
		$1,604,000

I respectfully recommend the enactment of laws providing for the following measures:

1. Empowering and directing the Canal Board to close all existing contracts for extraordinary repairs, except in those special cases where in the judgment of the Board, it cannot be done without detriment to the interests of the State; and repealing all existing appropriations for extraordinary repairs.

2. Appropriating not exceeding $400,000 to such payments as may be just and necessary to close existing contracts, but providing that no such appropriation shall become effectual in respect to payments on any contract, until the same shall be certified by the State Engineer in writing to the Canal Board, and afterward duly approved by the Canal Board; and providing further that nothing in any such act of appropriation shall operate or be construed to validate or recognize any contract tainted with illegality or fraud, or to waive any defense of the State in respect to any contract or any right of action in the State growing out of such contract, or of the work done or required by the same; and likewise appropriating, not exceeding $100,000, for the purpose of protecting or finishing such work as, in the judgment of the Canal Board, the interests of the State may require to be so protected or finished.

3. Appropriating not exceeding $400,000 to be expended with the approval of the State Engineer, and under the direction of the Canal Board, to the improvement of the water-way of the Erie canal, with a view of giving full seven feet depth of water, so far as may be practicable, at the opening of navigation in the present year; appropriating not exceeding $15,000 for a survey and measurement of the water-way of the Erie canal for the purpose of determining its real condition and the places where it specially requires improvement; and appropriating from the residue of funds hitherto applicable to extraordinary repairs on the Erie canal, which are now or may come into the treasury,

including moneys which may be withheld by the State on existing contracts or work under them, such sums as may be necessary to improve the water-way of the Erie canal to a depth of seven and a half or eight feet at such places as may be found most useful or most economical.[15]

4. Appropriating such portion of the unexpended balance of former appropriations for the Champlain canal as may be necessary to improve the water-way of that canal.[16]

5. Directing the Canal Board, at the commencement of the next session of the Legislature, to report what, if any, specific improvements, other than that heretofore mentioned, are essential to the interests of the State.

The advantages of improving the waterway of the Erie canal were discussed by me in the annual message of 1875, and again in the annual message of 1876. In the special message of March 19, 1875, while showing the enormous outlay on canals for alleged improvements, questioning the utility of most of the new constructions, exposing the fraudulent devices by which the contracts were obtained, and inviting investigation as to the quality of the work, I still insisted on the immense benefits, at comparatively small cost, of improving the waterway in the following language:

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[15] Chapter 425, approved May 25, provided for the completion of cancellation of all pending contracts for new work upon, and extraordinary repairs of the canals, and made an appropriation to pay the expense of such necessary extraordinary repairs as may be approved of and directed by the canal board. The act repealed all existing statutes appropriating or reappropriating moneys for new work upon or extraordinary repairs of the canals, except so far as the same related to the enlargement or improvement of the Champlain canal, and the reconstruction of the Oneida Lake canal.

The act also appropriated $400,000 to be expended in completing certain pending contracts, and for payment of amounts due thereon.

The same act appropriated $400,000 to be used in deepening the Erie and Oswego canals, to secure full seven feet of water therein.

The same act appropriated $51,000 for a survey of the Erie canal for the purpose of ascertaining and determining needed improvements.

The act also provided that nothing therein should be deemed to waive any defense which the State had or might have against any fraudulent claim or any right of action in favor of the State, nor should it validate any fraudulent or illegal contract.

[16] By chapter 185, passed April 28, an unexpended balance of $300,368.82, remaining from an appropriation of $500,000 made in 1874, was reappropriated for the purpose of bottoming out the Champlain canal, and raising and strengthening the banks so as to produce a uniform depth of six feet of water throughout its entire length, except that the sum of $30,000 was appropriated for amounts due on existing contracts.

Chapter 383, approved May 20, reappropriated $25,000 appropriated in 1874, for the improvement of the Glens Falls feeder, and directed the performance of that work.

'In my judgment, a far more important improvement of the Erie canal would be effected by a thorough system of ordinary repairs, which should give the water way its proper and lawful dimensions; and by progressively deepening it, wherever reasonably practicable, from seven to eight feet. As the object would be merely to enable the submerged section of the boat to move in a larger area of water, so that the displaced fluid could pass the boat in a larger space, it would not be necessary to alter the culverts or other structures, or to carry the walls of the canal below the present bottom; and the benefit would be realized in each portion of the canal improved, without reference to any other part of the channel which should remain unchanged. In facilitating the movement of the boat and quickening its speed, it would increase the amount of service rendered in a given time, and would thereby diminish every element of the cost of transportation. It would benefit the boatmen and carriers more, even, than one cent a bushel remission of tolls. It would be of more real utility to navigation than five or ten times its cost expended in the average manner of so-called improvements on the public works. But it is too simple, too practically useful, to enlist the imagination of projectors who seek the fame of magnificent constructions, and of engineers who build monuments for exhibition to their rivals, or to awaken the rapacity of cormorants who fatten on jobs.'

I renew the recommendation of my annual message upon this subject, and particularly 'that provisions be made by law to enable the State Engineer, soon after navigation is opened, to measure the depth of water in the canal by cross sections as often as every four rods of its length, and on the upper and lower mitre sill of each lock.'

These opinions are deduced from the best engineering science as applied to canal navigation, and are confirmed by practical experience. In the present depressed state of business is found an increased necessity and a favorable opportunity for going on with this measure. The interests of the consumers in cheap navigation, of the boatmen and forwarders for every facility in their business — the low prices of materials and the scanty employment of labor, are all circumstances which conspire to demand attention to this subject, and to make the present a fit and advantageous time in which to begin the work; and I do now earnestly ask your consideration of these recommendations, which I regard as of high public importance. [See note 15.]

I avail myself of this opportunity to renew the recommendation, recently submitted to you, that a law be passed conferring on the Canal Board full power of investigation and redress of all wrongs done the State in respect to canal work. It seems to me quite clear that such power ought to be vested in that body, and in every similar body, irrespective of the particular occasion.[17]

I likewise renew the recommendation of an ample appropriation in aid of the defenses of the State against fraudulent and unjust canal contracts, and in aid of civil and criminal actions in behalf of the State growing out of canal frauds. It is impossible to properly prepare such cases for trial without larger expenses than the State has hitherto been accustomed to make. The machinery of the State for such legal controversies is very inadequate and ineffective, compared with that of the United States government or any other government, and needs to be supplemented by accessory measures. In recent instances, we have seen rich and powerful public delinquents in the courts defending their possession of plunder and their personal liberty by very numerous counsel stimulated by enormous fees exceeding many times ordinary professional compensation. The effect is to demand extraordinary sacrifices of time and effort on the part of those who represent the people to render the litigations extremely engrossing and burdensome. The State will not imitate the practice of an extraordinary rate of professional compensation; but not to foresee and to provide for the attention, effort and aids commensurate with the necessity would be practically to abandon the assertion of the rights and the protection of the interests of the people against the wrongdoers. [See note 3.]

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[17] The Canal Board by chapter 388, approved May 23d, was vested with power to investigate all matters and transactions, including those of the past, connected with or pertaining to the canals. The act also conferred large judicial powers on the board, and regulated procedure on examinations, including the procuring of evidence and proceedings to punish for contempt.

SAMUEL J. TILDEN."

April 12. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *April* 12, 1876.

"I transmit herewith a communication from the commissioners of emigration, to which I earnestly invoke your immediate and considerate attention.

You are doubtless aware that, on the 20th of March last, a decision was rendered by the Supreme Court of the United States, in the case of Henderson v. The Mayor,* etc., of the city of New York and the Commissioners of Emigration, declaring unconstitutional and void the law of this State, requiring a bond from the parties bringing emigrants into the port of New York to indemnify each city, county and town of this State against such emigrants being a charge on them during the period of five years from the date of their arrival, but allowing a commutation of the liability under such bond now fixed by law at the sum of one dollar and one-half for each emigrant.

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* 92 U. S. 259. See note 18.

The effect of this decision is totally and instantly to destroy the whole income of the commission by means of which their beneficent operations have been hitherto carried on. The system is completely arrested, and for some weeks the commissioners have had no revenue whatever, and the means within their control will be exhausted by the first day of May.

The system was put in operation on the 6th of May, 1847, under an act passed the day before, and has been continued under subsequent amendments until the present time.

In the report of the commissioners to the Legislature, submitted on the 31st of January last, they state their operations, during the period of their existence, as follows:

'It (the commission) has during this period supervised the landing of over 6,000,000 of emigrant passengers with their baggage. It has provided and cared for 1,717,838 of alien emigrants for a greater or less period during the first five years subsequent to their arrival. It has treated and cared for 547,209 in its various hospitals, etc. It has supplied 485,669 with temporary board, lodging or pecuniary assistance. It has provided 400,187 with employment through the labor bureau at Castle Garden. It has forwarded to inland destinations and returned to Europe, at their own request, 58,122. It has relieved and provided for 226,651, in various counties and institutions of the State. Under this head the sum of $1,411,474 has been reimbursed by the commission to various counties and charitable institutions.'

The commissioners have also cared for, in its various asylums, and sent back at its own expense, to their native lands, many who have passed through this to other States, possessed of health and supplied with money, which they subsequently lost, and returned to this State to become a charge upon the commission.

It has cured many cases of sickness of emigrants destined to other States, and then dispatched them to their various destinations to enrich other communities with their money, capital and labor, value unimpaired.

The arrivals in the port of New York probably constitute at least eighty per cent of the total addition to the population of the United States by immigration, including the influx through Canada.

The value of this accession to our population as a productive power is not to be measured by mere numbers. In an investigation which I had occasion to make some years ago, it was ascertained that, while the males between the ages of 15 and 40, in the resident population of the United States in 1860, was 21½ per cent of the whole number, the males between the same ages among the emigrants arriving during forty years was 41½ per cent of the whole number. If the total influx during the twenty-nine years has been seven and a half millions, it has included the virile portion of a population of eighteen millions, that is persons of the ages which are nearly coincident with those usually accepted as embracing the period of military service, and are also those of the largest capacity for physical labor.

The chief sources of this emigration have been Germany and Ireland, forming about two-thirds of the whole influx. In the earlier portion of the period, the Irish emigration was much the largest; in the latter portion the German has been much the largest; in the whole period the German has been about 100,000 the larger.

In 1856 the commission kept an account of the average cash brought by the emigrants, and it amounted to $68.08 per head, which is deemed a low estimate of the real amount.

This migration is the most remarkable which has happened in the history of the human race. It has enacted an immense part in the growth of our population, the creation of great cities, the settlement of new States, the formation of the business of our railroads, the extension of all commerce and all industries, as well as in all the great national events of which our country has been the theater.

The benefits of this vast migration have been diffused all over the northern portions of the Republic. Less than forty-five per cent of the emigrants remain within this State even for the first year from their arrival, and after that a much smaller proportion. But, of course, the tendency is for a large portion of those who become the objects of public charity to fall upon the city and State of New York. And the still more important function of protecting the emigrants from extortion, deception and the innumerable variety of wrongs to which they are inevitably exposed, can only be performed by a machinery such as has been furnished by the laws of this State, which must be local in its operations, and can be most wisely and beneficially applied by local and State authorities.

In the practical conjunction which now exists, it seems to me necessary that the State should interfere, and advance the necessary funds to carry on the operations of the commissioners for a year to come, unless, in the meantime, relief can be obtained by congressional legislation. The value of the property which has been acquired by revenues derived from the commutation money is far in excess of the necessary advances, and the title to that property is in the State. On the other hand the faith of the State is fairly bound to continue its care of such emigrants as arrived previous to the abrogation of the system for five years after their arrival. The State holding the property of which it has the title, will acknowledge it as a trust, and may properly look to it for a reimbursement of such advances as are required by the present extraordinary emergency.

The decision of the Supreme Court of the United States may also involve the necessity of new or supplementary legislation for the protection of emigrants on their arrival, to which branch of the subject of emigration I also invite your attention.[18]

SAMUEL J. TILDEN."

May 1. To the Assembly:

Veto of the following items in the supply bill, chapter 193.

" 'The sum of $20,259, being the balance remaining in the treasury of the sum of $30,000 appropriated by chapter 760 of the Laws of 1873, for removing obstructions in the outlet of Cayuga Lake and the channel of Seneca river, is hereby appropriated to pay the Merchants' National Bank of Syracuse for the drafts on the Comptroller held by said bank and drawn by the Canal Commissioners of the middle division, in payment for work contemplated and directed by said original appropriation.

For the payment of drafts drawn by the Canal Commissioners upon the Comptroller for the balance due on the first account on file in the office of the Auditor for work done for removing obstructions from the outlet of Cayuga lake and the channel of Seneca river, the sum of $2,386.48, or as much thereof as the Auditor and Comptroller shall ascertain to be due thereon.'

The first of these two items reappropriates and the second provides for a deficiency in the appropriation to meet the final estimate on a work which has been, from the beginning, redolent of imprudence and fraud. There are no facts proved which can justify these claims.

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[18] See Henderson v. Mayor of New York (1875), 92 U. S. 259.

Chapter 281, approved May 15, 1876, appropriated $200,000 for the expenses of the commissioners of emigration for the year commencing May 1, 1876, but no money was to be paid if Congress should make an appropriation for the same purpose.

In April, the Legislature adopted a concurrent resolution, reciting the decision of the Supreme Court declaring unconstitutional certain State emigration laws, and urging federal legislation on the same subject, as well for the protection of emigrants as for the security of cities, towns and counties of this State.

On examining the affidavit of the engineer, verifying the final account, it appears that the statement that the work is completed is qualified by the insertion of the words 'as far as directed.' This interlineation totally destroys the effect of the statement. It is obviously in a different handwriting and a different ink from the rest of the affidavit. The statute (chapter 304 of the Laws of 1868, page 631) which authorized the work provided that no contract should be made except for the completion of the work. This provision has been disregarded. It would seem that the proposed appropriation is an attempt to obtain final payment in violation of the law.

'For the Onondaga salt springs, to reimburse the fund appropriated in the annual appropriation bill of 1875, for the current expenses of the works, which had been expended by the superintendent in order to bring into use new wells, and for machinery for working the same, the sum of $10,269.'

The general appropriation ought to be ample for every legitimate purpose, especially with the diminishing business of the springs.

NEW CAPITOL.

'Together with the sum of $183,890.05 (being the unappropriated remainder of the tax levied for the same object for the fiscal year commencing on the first day of October, 1875.)'

For the first time within my observation the appropriation for the new Capitol is not encumbered by arrears which largely consume the appropriation before it is made. The $800,000 will provide for considerably more than was done last year. Considering the immaturity and uncertainty of the plans for the completion of the work, and the delay thus far to ascertain with certainty its cost, which has been enjoined by several statutes, it is quite clear that the sum of $800,000 should be preferred to the sum of $983,890.05. The balance is the product of the increased valuation above the sum on which the appropriation of last year was computed. It is now in the treasury and lawfully applicable to general purposes. It should remain there to provide for appropriations and to lessen taxes. [See note 7.]

GENERAL OBSERVATIONS.

It is commendable in the Legislature that it has computed and submitted for the action of the Governor the general appropriation bill and the supply bill before the close of the session. It has thus preserved the revisory power of the Senate and Assembly as designed by the Constitution.[f]

But this advantage, attained so late in the session, has some incidental inconveniences. The period for the examination of the appropriation bill expired on the Saturday, and the period for the examination of the supply bill will expire on the Monday preceding the Wednesday fixed for the final adjournment of the Legislature.

The ten days allowed for the action of the Governor are at a time when every moment is filled by attention to numerous other bills, to the communications from members and others to which these bills give occasion, and when the general business accumulates to its highest pressure. The appropriation bill contains 163 specific sums of money, and 350 distinct objects to which they are applicable. The supply bill contains 223 specific sums of money applicable to 425 distinct objects.

To analyze these bills, to ascertain their relations to the taxes proposed to be levied, to keep the appropriations within the means of the treasury so that a floating debt will not arise in disobedience to the Constitution, and bringing with it such embarrassments to the fiscal operations of the State, and so that the sinking funds will not be invaded, is of itself an important duty. In examining so many items — many of them complex — many of them requiring much investigation of facts in order to determine their character and expediency — it cannot but be that some of them cannot be made the subject of a fresh inquiry by the Governor adequate to discover and adjudge their real merits, but must stand on the authority of the committees and the Legislature, if no ground for rejecting them is apparent.

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[f] See Const. 1846, art. 4, § 9.

I have the satisfaction of thinking that, on the whole, these bills are less subject to objection than any former ones within my observation; that, with the items stricken out by me, the expenditures will be within the means provided; that, while some appropriations are larger than is desirable, and the Governor has no power to reduce them, the aggregate result, if the items stricken out be omitted, will enable the tax rolls now pending to be conformed substantially to the scheme suggested in my annual message, provided the surplus of $475,000 tax for last year, caused by the enlarged valuation, be appropriated to the bounty debt, and the deficiency in the canal sinking fund be provided for without a new tax, as I understand is intended by the canal committee of the Assembly.

The items hereinbefore specified are objected to, the other portions of the bill are approved.''

May 3. The Legislature adjourned without day.

THIRTY-DAY BILLS.

May 25.

Veto of the following items in Assembly bill, chapter 425, entitled "An act to provide for the completion or cancellation of all pending contracts for new work upon, and extraordinary repairs of the canals; and making an appropriation to pay the expenses of such necessary extraordinary repairs as may be approved of and directed by the Canal Board."

'' I object to items contained in section 4 of this bill, which are as follows:

' For the construction of a lift bridge over the Erie canal at Main street, in the village of Brockport, the sum of forty-five hundred dollars or so much thereof as may be necessary; provided, that the present bridge be taken down and removed to Palmyra and erected over the Erie canal between Kent and Earl Streets.'

'For the construction of a lift bridge over the Erie canal at Brighton, Monroe County, to replace the iron bridge now existing there, the sum of forty-five hundred dollars or so much thereof as may be necessary.'

'For the construction of a swing, hoist or turn table bridge over the Oswego canal in the City of Syracuse, on Salina Street, at its intersection with Bridge street, in place of the present bridge, and in accordance with the provisions of chapter 382 of the laws of 1874, the sum of fourteen thousand dollars, or so much thereof as may be necessary.'

'For the construction of a lift bridge over the Erie canal at Genesee Street, in West Troy, to replace the iron bridge now existing, the sum of forty-five hundred dollars, or so much thereof as may be necessary.'

'For the construction of a lift bridge over the Erie canal at Exchange street, in the city of Lockport, in the county of Niagara, the sum of five thousand dollars, or so much thereof as may be necessary.'

'For reconstruction of an iron bridge over the Erie canal between Earl and Kent streets, in the village of Palmyra, the sum of eight hundred dollars, or so much thereof as may be necessary.'

As to these items, the State Engineer reports to me as follows:

'Lift, hoist or swing bridges.

'1. Their first cost and cost of repairs are much greater than for ordinary bridges.

'2. Navigation is liable to interruption from want of promptness in their management.

'3. They are special, local improvements, not necessary to secure good navigation, which the localities specially benefited should pay for and maintain, if built at all.'

Mr. Cole, Chairman of the Canal Committee of the Senate, called my attention to the fact that, in some of these cases, no law has been passed authorizing the construction for which the appropriations are made and stated to me that he had assented to the bill for the valuable provisions it contains, assuming that these items would not receive the Executive sanction.

In the memorandum on the appropriation bill for 1875 for extraordinary repairs, the following observations were made:

'If changes in the structure of bridges are to be made, they should be done upon a systematic plan, duly considered by the Canal Board, with the approval of the State Engineer, and an examination of the particular case should be had to decide whether the proposed change is clearly necessary for public purposes.

'The tendency to change the innumerable bridges over the canal, at the instance of private persons and local influences; to conform to a prevailing fashion, the contagion of which passes from one bridge to another — in the absence of any resisting power in behalf of the State, which finally pays the cost of the change — is a serious and growing evil. The applications for swing bridges — tearing down the existing bridges — are becoming frequent. They are demanded by some individual, corporate or local advantage — real or imaginary. They are usually in places which have been already largely benefited by the construction of the canal. They impose on the State a large extra cost, and charge it with an annual expense for operating each one equal to the interest on about $25,000. There are 1,318 bridges over the canals, and the erection and operation on this plan of one-sixth of this number would probably cost the State as much as the original outlay for the Erie canal. The fashion is full of danger.'

I object also to the following items contained in section 4 of this bill:

'For rebuilding the bridge over the Erie canal on Main street, in the village of Fultonville, the sum of three thousand dollars or so much thereof as may be necessary.'

'For rebuilding bridges over the State ditch on Main and Delaware streets, in the village of Tonawanda, and for building a bridge over said ditch on Fletcher street, the sum of two thousand dollars, or so much thereof as may be necessary.'

'For building a farm bridge over the Champlain canal, on the farm of Jerry Brown, in the town of Whitehall, the sum of six hundred dollars, or so much thereof as may be necessary.'

'For the completion of the bridge over the Glens Falls feeder, east of and near Green & Richards' steam mill, the sum of eight hundred dollars, or so much thereof as may be necessary.'

'For the construction of three bridges over the State ditch in the village of Tonawanda, in Niagara county, at Marion street, Oliver street and Van Vort street, the sum of two thousand dollars, or so much thereof as may be necessary.'

'For the construction of a foot bridge over the Erie canal at Mud lock, at the junction of the Cayuga and Seneca canal, the sum of five hundred dollars, or so much thereof as may be necessary.'

'For the construction of an iron bridge over the Erie canal at the south end of Prospect street in the city of Lockport, the sum of three thousand dollars, or so much thereof as may be necessary.'

'For repairing and reconstructing the docking on the Main and Hamburg canal, in front of Hubbell Brothers' foundry in the city of Buffalo, the sum of two thousand dollars, or so much thereof as may be necessary.'

'For the construction of approaches to the bridge over the Erie canal at Averill street in the city of Rochester, twenty-five hundred dollars, or so much thereof as may be necessary.'

'For continuing the work on the breakwater in the harbor of Buffalo known as the Bird Island pier, including the amount already owing and to be paid by the State, the sum of thirty thousand dollars.'

If these items or any of them shall be found proper and necessary, ample provision is made for them in section 3 of this Act. It will be within the authority of the Canal Board under that section and other provisions of law, to do this work, if, in their judgment, the interests of the State or its obligations towards individuals or localities should so require; and adequate appropriations exist to carry out their decisions.

I object also to an item in section four, which is as follows:

'For the payment of interest to E. H. French, or his assigns on an amount as adjusted by the Canal Board under chapter 879 of the Laws of 1871, and also under chapter 850 of the laws of 1872, the sum of seventeen hundred and forty-eight dollars and twenty-two cents.'

This appears to be an appropriation for a gratuitous payment of interest on a sum which was a mere extra allowance to the contractor, and which purported to be, in itself, a final adjustment.

By the first Act the Canal Board was authorized to award to E. H. French such sum as they may find him entitled to, 'if said Board shall find that said work was not embraced in the special notice of letting under which he entered into a contract with the State, *nor contemplated at the time of the letting.'*

On December 9, 1871, the Canal Board having made an examination of the matter pursuant to the said Act, found that the work for which French claimed an award 'was contemplated at the time of the letting.' A resolution to that effect was passed; but rescinded the same day, and the matter laid upon the table.

On Dec. 28, 1871, the Canal Board resolved that French had 'made expenditures greater than his contract price by the sum of $15,000, but that under said Act no allowance can be made,' thus affirming the first resolution adopted so far as it found that the work was contemplated in the letting.

Chap. 850, Laws of 1872, made an appropriation of $15,000, 'For payment of Edward H. French, the amount *as adjusted by the Canal Board* for work on section five, Erie canal, *greater than his contract price.'*

As under the first Act no allowance could be made, it would appear that French should not have been paid the $15,000 under the second or appropriation Act. Whether this was erroneously or wrongfully or gratuitously paid him, he can have no claim to interest. These items amount to $96,448.22.

GENERAL OBSERVATIONS.

The object of this bill was to stop the wastes and frauds of the system of extraordinary repairs, as it has hitherto been practiced, to enable the Canal Board to terminate all existing contracts except the few which, in their judgment, might be necessary to the beneficial use of the canals, and to apply the $1,600,000 of money which the measures of last year had reclaimed into the treasury, and the further sums which should be recovered to real and substantial improvement of the main trunk water-ways. It was believed that by restoring the Erie canal to its lawful depth of seven feet, and gradually increasing the volume of the water on the levels, the speed of the boats could be increased and the use of steam motive power facilitated. It was not intended to increase the draft of the boat, but merely to give it an easier traction and a swifter motion by lessening the retarding influences of the water confined in a channel having fixed physical boundaries. It is not doubted that a reduction in the cost of transportation could have been thereby effected more important than was attained by the recent reduction of tolls. The plan was sanctioned by the best engineering and scientific abilities and skill, and by ample practical experience.

But the interests which fatten on the abuses of the system of 'extraordinary repairs' were vigilant in devising imaginary objections and in stimulating opposition.

In the closing days of the session, Mr. Burleigh, chairman of the canal committee of the Assembly, communicated to me the opinion that while the $300,000 appropriated for the improvement of the Champlain canal and the $400,000 appropriated to bottoming out the Erie canal could be maintained, the further appropriation of $800,000 for deepening the water-way of the Erie canal was hopeless of passing the Senate. On consultation with him, as it was unwise to have that surplus remain idle in the treasury, exposed to the risk of being frittered away in jobs without any real utility, it was thought best to apply it to paying the deficiency in the canal sinking fund, thereby enabling so much of the taxes to be remitted. That was accordingly done.

The items heretofore specified are objected to; the other portions of this bill are approved."

May 26.

Veto of Assembly bill, entitled "An act to authorize a tax of three-tenths of a mill per dollar of valuation to provide for deficiency in the sinking fund under section 3 of article 7 of the Constitution."

"This bill authorizes a tax of three-tenths of one mill to meet the deficiencies in the canal sinking fund in obedience to section three of article seven of the Constitution. The valuation, as nearly as can now be ascertained from the reports of the Assessors in the Comptroller's office, is

$2,390,803,696. The produce of this tax, computed on that valuation, would be $717,241.

This bill came into the Executive chamber on the 27th day of April. It is rendered unnecessary by a subsequent Act which came into the Executive chamber on the 4th of May — the day after the adjournment — and which provides for paying these deficiencies without a tax. This latter bill, in accordance with my special message of March 24, 1876, in relation to the canals, provides for the completion or cancellation of pending contracts for extraordinary repairs, and for the application of $1,600,000 of money yet unexpended which had been reclaimed from the folly, waste and fraud incident to those expenditures.

It contained two appropriations for real improvements to the Erie canal. The one was $400,000 for bottoming it out and restoring it to the lawful depth of seven feet. The other was the subsequent use of $800,000 to go on with like improvements in the water way, which would facilitate and quicken the transit of the boat by deepening the volume of the water through which it should move on the levels. No doubt a measure so practical, so simple and economical would lessen the cost of transportation, and would be of more real service to the navigation than ten millions expended in the usual manner.

At the very close of the session, the chairman of the canal committee of the Assembly, who had supported such improvements on the Erie canal as well as on the Champlain, came to me with the information that the latter appropriation of $800,000 for the Erie would fail in the Senate, which had manifested opposition to these measures. The next best use of the rescued moneys seemed to be to pay debts and remit taxes. An amendment was prepared making that change. It was adopted fifteen minutes before the close of the legislative session. I have signed that bill, and now reject this.

TAXES FOR 1874 AND 1876.

The taxes for 1874 were 7¼ mills on a valuation of $2,169,307,873. They amounted to $15,727,482.

The taxes for 1876 will be 3 11-24 mills on a valuation likely to be, as nearly as can now be ascertained, $2,390,803,696. That would produce $8,268,196.

This result approximates to the ideal proposed in my last annual message, of reducing the taxes for 1876 to one-half those of 1874.

It has been worked out, notwithstanding an increase of $276,869 in the tax for schools, caused by an increase of valuation applied to a system which makes the assessors the real arbiters of the amount of the tax, and which has increased it a million in the last few years. And, also, notwithstanding $200,000 is included for the Commissioners of emigration, which is in effect a loan.

DEBTS PAID IN 1874 AND 1876.

In 1874 the appropriations for sinking funds were:

Bounty debt sinking fund.......	$4,260,000	
Canal floating debt sinking fund..	198,888	
Total in 1874		$4,458,888

In 1876, the appropriations to the bounty debt sinking fund were:

Proceeds of one-third mill tax	$796,934
Surplus of tax last year unappropriated till now	475,560
Premium actually realized thus far by Mr. Robinson's conversions	750,207
Making	$2,022,701

The appropriations for the canal debt sinking fund were:			
From moneys reclaimed from extraordinary repair fund for principal	$630,325		
For interest	93,032	$723,357	
Total in 1876			$2,746,058
Less applied to sinking funds in 1876 than in 1874			$1,712,830

In round sums, a million and three-quarters less has been absorbed into the sinking funds in 1876 than in 1874; but, of the two millions and three-quarters, which have been or are to be so absorbed in 1876, two millions come from savings and economies, and the tax for the sinking fund in 1876 is thereby reduced to three-quarters of one million.

ITEMS OF SAVINGS.

Of this two millions of savings, the item of $475,000, carried over from the taxes of last year and now first appropriated, and the item of $723,000 now rescued from the extraordinary canal wastes, have been explained. The other item, $750,000 of realized premiums, remains to be explained.

In the report of Comptroller Hopkins, dated January 4, 1876, it was estimated that the balance of interest to be paid by the bounty debt sinking fund over that to be received by it would be $893,767, but that the premium on the securities held by the sinking fund would amount to $1,200,000, and a surplus over the balance of interest would remain amounting to $306,233.

These premiums were nearly all on long stocks of the State and United States payable in gold. On the resumption of specie payments, or the approach of that result, or a general public expectation of it, most of those premiums would vanish. A loss of one-quarter of them would extinguish all the surplus beyond the adverse balance of the interest account. Successful financiering in private or public affairs depends largely upon the disposition to seize the opportune moment for converting favorable possibilities into certainties. I ventured in the last annual message to suggest the application of the sinking fund to the payment of the debts.

This suggestion, and the more explicit reasons now disclosed, would probably have gone for nothing if Mr. Comptroller Robinson had not come into the charge of the State finances. His own notions of sound finance dictated a policy which he has, as far as has been practicable, executed with rare sagacity, judgment and skill. In four months, he has bought in $4,625,900 of the bounty debt by exchanges and by conversions of assets and purchase of State liabilities. He has realized $750,207 of these premiums, being $255,631 in excess of the estimated value of the assets, converted — after deducting the premiums on the debts bought in.

SOURCES OF ECONOMIES CAUSING THE REDUCTION OF TAXES.

The whole saving in 1876 as compared with 1874 — allowing for the excess of the appropriation for schools of $276,869, and the loan of $200,000 to the Commissioners of Emigration, is $7,936,155. Of that sum $1,812,830 is in the diminished payments on debts. All the residue, $6,223,325, is in real economies.

SAVINGS.

The application of savings from former taxes and from the expenditures for which they were levied in the particulars mentioned, furnishes $1,949,124.

CANAL EXPENDITURES.

The diminution of certain canal expenditures furnishes $2,372,680.

The taxes for these purposes were in

	1874	1876
Extraordinary repairs	$1,898,144	None.
Awards and outlays in excess of appropriations	474,536	None.
	$2,372,680	

all of which was saved.

GENERAL EXPENSES.

(Including Capitol and asylums and reformatories, and excluding increase of tax for schools and advances to Emigrant Commission):

1874	$6,087,620
1876	4,005,887
Saving	$2,081,733

RECAPITULATION.

Saving applied	$1,949,124
Canal retrenchments	2,372,680
General retrenchments	2,081,733
Total	$6,403,537

It thus appears that nearly eighty per cent. of the reduction of eight millions in State taxes was directly produced by these economies.

OTHER RETRENCHMENTS.

Expenses paid out of the revenues and funds of the State though they do not in the first instance affect the taxes, ultimately come to that result when they have to be replaced. They are, therefore, equally worthy of attention.

ORDINARY CANAL REPAIRS.

	1874	1876	Saving.
Current	$1,424,510	$1,120,600	$303,910
Deficiencies	250,000	156,879	93,121
Total saving			$397,031

REAPPROPRIATIONS.

These are paid out of cash in the treasury:

1874	1876	Saving.
$917,379	None.	$917,379

RECLAMATIONS.

The reclamations of moneys in the treasury from unexpended appropriations for extraordinary repairs amounts to $1,604,000. A considerable sum in addition may be expected.

REDUCTIONS IN 1875 AS COMPARED WITH 1874.

Extraordinary repairs	$1,898,144
Ordinary repairs	415,360
Awards and outlays in excess of appropriations	40,674
Re-appropriations	577,240
	$2,931,418

Reductions in 1876 as Compared With 1874.

Extraordinary repairs	$1,898,144	
Ordinary repairs	397,031	
Awards and outlays in excess of appropriations	474,536	
Re-appropriations	917,379	
		$3,687,090

This is besides the reclamation of money realized to the extent of $1,600,000 and likely to reach two millions.

In the meantime, no interest of the State has been injured or neglected. The appropriation for the new Capitol for the present year of $800,000 will yield more means to pay for new work than the usual appropriation of $1,000,000; for the fresh construction will start without any of the arrears which have heretofore encumbered its progress. The appropriation of nearly $500,000 for continuing the construction of asylums and reformatories is made more effective by being carefully applied to the completion of specific portions to be brought into use.

The people may have the satisfaction of feeling that while half of their State taxes are remitted—$8,000,000 out of $16,000,000—it is accomplished without improvidence of the future or temporary retrenchment which cannot be maintained; and that the appropriations have been kept clearly within the means provided by the taxes levied; so that no temporary floating debt will be created or invasion of the sinking funds made, as has often and to a large extent, happened hitherto, in disobedience to the express commands of the Constitution, and in violation of the whole scheme and policy of that instrument in respect to the State finances."

June 2.

Veto of Assembly bill, entitled "An act to provide for the creation of a board of charities, and for the better administration of public charities in the county of Kings."

"This bill creates a novel and eccentric appointing power, in which it vests the authority to appoint a commission of twelve persons who shall be governors of the charities of Kings county. The County Judge and the Sheriff of the county are to meet at the Sheriff's office and to agree on twelve persons who are to constitute such commission, and if they do not agree within ten days, the County Judge is to appoint six and the Sheriff is to appoint six of the governors; and if either fails for twenty days to appoint his share, the governors appointed are to fill the vacancies.

These provisions in effect divide the appointments between the Judge and the Sheriff. These officers have no motive to make any sacrifice of preference for the purpose of effecting an agreement. The only consequence of not agreeing is, that each of these officers will have the absolute power to appoint one-half the governors. In practice six governors will be named by the County Judge, and six will be named by the Sheriff.

LEGALIZES AN ABUSE.

The practice which has grown up in administrative boards of dividing public trusts among the individual members, as if there were a private property in the patronage involved in them, is itself an abuse of power and a breach of duty. This bill commands such a distribution between two public officers for the purpose of effecting such distribution between two political parties. It assumes that the main consideration is, that the spoils of office should be fairly divided, and ignores the rights and interests of the public in the administration of official trusts.

EVASION OF THE CONSTITUTION.

The Constitution (Art. X, sec. 2) declares that all officers of the description of these governors shall be elected by the people or appointed by such local authority as the Legislature may direct.

The intent of the Constitution, undoubtedly, is that such officers shall not be in effect appointed by the Legislature, through a circuitous device; but that they shall either be chosen by the people of the locality or appointed by some natural and appropriate organ of the people of the locality.

NOVEL AND ECCENTRIC APPOINTING POWER.

It cannot be supposed that the people voted for the County Judge or the Sheriff in contemplation of the appointment by those officers of persons to govern the charities of the great county of Kings. The authority created by this bill is conferred on them after they were in office. There is nothing in the nature or functions of their offices to suggest the propriety of such a device.

UNFITNESS OF SHERIFF.

There is no example in our laws of an Act conferring the appointing power of a county officer on a sheriff; still less of an Act conferring on a Sheriff an appointing power which is exercised over a half million of people comprising the second city of the State.

The present bill embraces all kinds and degrees of unfitness. It is wholly novel. It was totally unexpected to the people when they elected the sheriff to his office. That office is lucrative. It is the sport of partisan contests. Its duties are of a nature which do not lead to the selection of persons having the elevation of character which the people usually require in high judicial or high administrative functionaries. It could not ordinarily be anticipated that a very good selection of governors of charities would emanate from such an appointing power. The present case is attended with incidents still more discouraging and repulsive. I am informed by Judge John A. Lott, who was the chairman of a committee of citizens to whom the consideration of this matter was entrusted, that it was unanimously agreed to vest the appointing power in the County Judge alone, and that the Sheriff was afterwards interpolated. Without meaning to express any opinion on the measure as it originally stood, in its general character, or to sanction the policy investing judicial officers with administrative or political functions tending to demoralize the judicial office, the change, and the circumstances under which that change was made, increases the distrust of the expectation that practical good will flow from the violation of sound principles which the bill involves.

EXPERIENCE OF SUCH LEGISLATION.

Nearly all the evils of misgovernment in the city of New York, during the last twenty-five years have been inflicted by just such legislation as is proposed by this bill.

Abuses or wrongs of local administration sometimes spring from defects of the governmental system and sometimes from the frailties of human society. Existing evils naturally absorb public attention. Sometimes they are the motive to change and sometimes the pretext for change.

The new expedient, even if intended in good faith as a reform, may be prolific of still greater evils than those which call for a remedy. But the mischiefs which always result from the violation of established principles of responsible government, as it has grown up in centuries of experience — from a departure from the settled methods by which official accountability is created and made effective — are not usually foreseen by the unthinking contrivers of novel devices for instant change induced by impatience of present evils.

A still greater danger results from the fact that the occasions of such change are the opportunities for the worst designs of selfish cliques, factions and partisans and their schemes of ambition or plunder.

As early as 1857 was instituted the non-partisan Board of Supervisors of the county of New York. It was a monstrosity in governmental science and governmental experience. It was practically irresponsible. It every year absorbed new powers, until at last were generated the frauds and crimes which have become notorious in our public history.

The promoters of the dishonest trick of agreeing in the Legislature or the lobbies on a change in city officers and city patronage, and then creating a new appointing power to carry out the bargain, by conferring the authority on some existing official who had stipulated to make the desired removals and appointments, rapidly grew in audacity, and in corrupt methods and corrupt means.

In 1870, when a bill was about to be passed, earlier than the Tweed charter, it has been credibly stated that the officer to nominate and the officers to confirm were each sworn, in private, to select the designated persons.

When the Tweed charter was pending, on the fourth of April, 1870, I addressed the Senate committee, pointing out the fact that the bill had all its significance in a few clauses which terminated all existing offices — gave to the Mayor then in office the power to make the new appointments — and destroyed all the accountability of these new officers by removal or by any supervising control by the people or their known organs.

That speech contained the following passage:

'I am not afraid of the stormy sea of popular liberty. I still trust the people. We, no doubt, have fallen upon evil times. We, no doubt, have had many occasions for distrust and alarm; but I still believe that *in the activity generated by the effectual participation of the people in the administration of the government,* you would have

MORE PURITY and MORE SAFETY *than under the system to which we have been accustomed.* It is in the *stagnation* of BUREAUS and COMMISSIONS that *evils* and *abuses* are generated. The storms that disturb the atmosphere clear and purify it. It will be so in politics and municipal administration, if we will only trust the people.'

The immediate reply was made by the Counsel of the Citizens' Association. The bill was advocated as a reform measure, framed on non-partisan ideas. It was supported by two hundred eminent citizens. It was passed almost unanimously. Mr. Tweed was hailed in a leading Republican journal as a reformer. It was avowed that the city offices were to be divided between the two political parties, and it was scarcely concealed that money had been used to obtain votes for the bill.

One month and a day later — on the 5th of May, 1870 — occurred the flagitious transaction known as the 'special audit' in which $6,312,500 of the proceeds of new bonds was divided up, for not ten per cent. of which was there any pretence of an equivalent.

This transaction, and other similar ones which followed, were not the fruits of popular election or popular government. They were the direct results of immunity from discussion in the newspapers, and immunity from the voting power of the people. No official would have dared to commit crimes which required continuous secrecy, if he had not been in office under a law that sheltered him from removal and from accountability — a law which could not be changed until a future session of the Legislature, and then could not be changed except with the concurrence of all the three branches of the legislative power. All the established maxims of responsible government had to be violated to make possible such enormous public wrongs. These wrongs were the natural outgrowth of the system, and its corrupt objects and its corrupt means by which it was brought into existence.

This is but one of many illustrations. The worst results which sometimes come from elective systems of government, are small evils compared with those that flow from government under secret bargains and corrupt arrangements made in the lobbies at Albany.

MY PREVIOUS DECLARATIONS ON THIS SUBJECT.

These are no new opinions. They have matured during twenty-five years of observation of municipal government in this State. They accord with the best deductions and best experience concerning human government in civilized countries.

ANNUAL MESSAGE OF 1875.

The following observations are contained in my first annual message, sent to the Legislature in January, 1875:

'All the invasions of the rights of the people of the city of New York to choose their own rulers and to manage their own affairs — which have been a practical denial of self-government for the last twenty years — have been ventured upon in the name of reform, under a public opinion created by abuses and wrongs of local administration that found no redress. When the injured taxpayer could discover no mode of removing a delinquent official, and no way of holding him to account in the courts, he assented to an appeal to the legislative power at Albany; and an Act was passed whereby one functionary was expelled, and by some device the substitute selected was put in office. Differing in politics as the city and State did, and with all the temptations to individual selfishness, and ambition to grasp patronage and power, the great municipal trusts soon came to be the traffic of the lobbies. A new disposition of the great municipal trusts has been generally worked out by new legislation. The arrangements were made in secret. Public opinion had no opportunity to act in discussion and no power to influence results. Inferior offices, contracts, and sometimes money, were means of a competition from which those who could not use these weapons were excluded. Whatever defects may sometimes have been visible in a system of local self-government, under elections by the people, they are infinitely less than the evils of such a system, which insures bad government of the city, and tends to corrupt the legislative bodies of the State. A popular election invokes publicity — discussion by the contending parties — opportunity for new party combinations, and all the methods in which public opinion works out results.'

SPECIAL MESSAGE ON MUNICIPAL GOVERNMENT.

In my special message of May 11th, 1875, recommending a commission to consider the problem of municipal government, the same principles are asserted.

INTERFERENCE WITH LOCAL GOVERNMENT.

'The abuses and wrongs of the local administration which found no redress, generated a public opinion under which appeal was made, in the name of reform, for relief to the Legislative power at Albany; and it was found that an Act could be easily contrived whereby one official could be expelled from office and, by some device, a substitute put in his place. It was found, likewise, that the powers of an office could be withdrawn and vested in a different officer or in a commission, the selection of which could be dictated from the State Capitol.

'It is the experience of human government that abuses of power follow power wherever it goes. What was at first done, apparently at least, to protect the rights of the minority or of individuals; what was first done for the sake of good government, came in a little time to be done for the purposes of interested individuals or cliques.

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'These were the fruits, not of popular election, not of local self-government, but of the culmination of a system under which the governing officials had been practically appointed by legislative acts of the State. *The device of creating a special appointing power to do what was desired by a clique or party, or was agreed upon beforehand* was not perfectly new. It had been frequently used in a smaller way.

The contagion of such practices threatens to extend to other cities. If public opinion and the state of the constitution and laws allow it, the temptation to transfer the contest for offices from the local elections to the legislative halls will arise as often as aspirants are defeated and can expect to recover there what they have lost at home. *There is no remedy except in the refusal to give to such devices the sanction of law, until constitutional provision shall give permanency to the methods of appointment and removal in municipal governments.'*

COMMISSION ON MUNICIPAL GOVERNMENT.

The commission appointed to consider the subject of municipal government, had their period of service extended at the late session with a view of preparing amendments to the constitution. No doubt the most important provision will be one regulating the appointing power in cities, and prohibiting the incessant interference of the Legislature creating new dispositions of the local offices, which have been so prolific of abuses, wrongs and frauds. Under such provisions the present bill would become impossible.

PRECEDENTS.

It happened last year that Mayor Hunter and the common council of Brooklyn disagreed about important appointments. A bill was passed to remove the dead lock if it should continue for thirty days, by creating a new power of nomination, consisting of three officers of the city government, of which the Mayor was one, but was liable to be in a minority. I deemed it my duty to refuse my sanction to that bill. At the same session, as at the present, the incessant local conflicts within the city of New York were prolific of similar expedients, alternately attempted by opposite parties and by rival factions. None of them received any countenance or favor from me.

CONCLUSION.

Without entering on the inquiry whether a clear or commanding public benefit or necessity might create an exception to the application of these principles, it is enough to say that no such question is raised by this bill. Two of the five commissioners of the present board of charities are to be elected by the people of Kings county in less than six months. I see no reason to doubt that their choice will be as likely to be good as the arbitrary selection or private agreements of the sheriff as to six of the twelve proposed new governors. At any rate the public will have some chance to know about them. They will be submitted to the test of an open and public discussion.

If an appointive method be preferred to an elective method, organs of the popular will, more fit than the sheriff or even the county judge, can be found, by separating the charity system of the city of Brooklyn from that of the county of Kings. A better machinery than the twelve governors of the charities of Kings county can be devised. The experience of the ten governors of the charities of the city of New York was disastrous, and they were abolished with universal applause. The appointments by the county judge and sheriff, if the proposed bill should become a law, are for one, two, three and four years; and no change could be made without the concurrence of all three branches of the legislative power. The remedy for error or wrong in the selection would be much more difficult than at present; and if the new expedient should fail of realizing any improvement on the present system, it would greatly delay the possibility of effecting any improvement. Of all the gentlemen who have favored the bill with whom I have had interviews, none have approved such a method of appointment as a permanent system; nor have any professed to regard the sheriff as a fit or safe depository of such a power, or offered any sort of justification for a scheme hitherto totally unknown in the laws or policy of this State."

June 2.

Veto of Assembly bill, entitled "An act to reappropriate moneys for the payment of awards made by the Canal Appraisers, and expenses attending the same, and the payment of awards by the Canal Board."

"I object to the following item of this bill:

'The unexpended balance of one million eleven thousand one hundred and thirty-eight dollars and forty-two cents, appropriated by Act, chapter 768 of the Laws of 1870, entitled "An act to authorize a tax of seven-eighths of a mill per dollar of valuation for the payment of the awards of the Canal Appraisers, and for supplying deficiencies in appropriations of 1868 and 1869," passed May 9, 1870, and reappropriated by Acts chapter 509 of the Laws of 1872, and chapter 392 of the Laws of 1874, being the sum of eighty-nine thousand eight hundred and eighty-one dollars, or so much thereof as shall remain unexpended on the 9th day of May, 1876, is hereby reappropriated to pay the awards made by the Canal Appraisers in the years 1868 and 1869, and the interest thereon, or the amounts which may be awarded in lieu thereof on appeals from the original awards by the Canal Board, or by the Canal Appraisers, on any rehearing of such cases.'

This item provides the money to pay several awards made by the Canal Appraisers in 1868 and 1869, at least one of which, and that one being for a large portion of the sum reappropriated, is now known to be fraudulent. In some of the other cases appeals have been taken from the awards and are still pending.

As this item is drawn, I cannot strike out one of these claims without disapproving of the whole item.

I think it better, therefore, to object to the whole appropriation, leaving it to a subsequent Legislature to provide for the payment of the honest claims, especially as most of those claims are in litigation, and will not be finally adjusted during the present year; the remainder of the bill is approved."

June 2.

Veto of Senate bill, entitled "An act to amend section 7 of chapter 633 of the Laws of 1866, entitled 'An act in relation to the benevolent fund of the late volunteer fire department in the city of New York, passed April 17th, 1866, as amended by chapter 962 of the Laws of 1867, and as further amended by chapter 297 of the Laws of 1870,'"

"By the existing law the tax on the receipts of foreign insurance companies doing business in the City of New York, is to be paid over to the firemen's relief funds during a period ending April 17, 1877. This bill amends the existing law so that the tax shall be so paid for ten years from that date. It is so carelessly drawn that the existing law would be superseded, if it were signed, and there would be no provisions by which the tax for the present year, ending April 17, 1877, could be paid. If it be not signed the tax can be paid until then, and the next Legislature can make provision for its payment after that date if it be proper and expedient to prolong the allowance. Meanwhile, the present fire commissioners send me their unanimous protest against the expediency and necessity of the measure. A bill which gives rise to these objections should be remitted to future legislation."

June 2.

Veto of Assembly bill, entitled "An act in relation to the district courts in the city of New York."

"This bill would effect a considerable reduction in the cost of the New York City District Courts. But the justices who were chosen at the last general election, though by different parties, have united in a representation to me that it would materially interfere with the efficiency of the Courts. It is not necessary for me to examine as to that, as there is a fatal constitutional objection to the bill.[g] Upon taking office the justices displaced fifteen of the clerks and assistant clerks. Their power to do so was contested; and on the fourth of January last the Attorney General commenced an action to oust one of the new clerks, that the matter might be judicially determined. The case has been argued, and is now awaiting the decision of the General Term. This bill undertakes to legislate the new clerks into office. If they are not now legally in office, such legislation is an appointment. The Court of Appeals held in the case of The People against Batchelor (22 N. Y. Reports, 128) that such an appointment is beyond the power of the Legislature. That case was decided upon another point, but the majority opinion by Judge Selden, and the dissenting opinion by Judge Denio, concur in holding that these clerks are city officers, and the Legislature cannot appoint them. The Court was unanimous upon that point, and its decision must now control my action."

June 2.

Veto of Senate bill, entitled "An act relating to the local government of the City of New York."

"This bill contains many useful and valuable provisions. It also contains some provisions that are experimental, and too absolute and rigid for the practical working of administration, and which are likely to introduce confusion when instantly imposed on a complicated existing system without time for adaptation or assimilation.

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[g] Const. 1846, art. 10, § 2.

The bill, on the eve of its passage, was subjected to interpolations which ought not to be acquiesced in. One of them is the clause which attempts to impose on the city a burden of probably a million and a quarter of dollars in respect to former assessments. This provision is not akin to the object of the bill as expressed in its title.[h] If deemed to be unconstitutional and void, while it would be of no use to the parties who have secured its insertion, it still remains an insurmountable obstacle to Executive sanction. It was added without consideration by the Legislature, and for the purpose of compelling acquiescence or the destruction of the whole bill. This, and other objectionable clauses, are instances of legislative log-rolling bad in principle, of evil example, and which ought not to be allowed to succeed. The policy of the Constitution requires that such provisions should be separate measures, and should be submitted to the independent judgment of the law-making branches of the government. If there be an equity in favor of the parties to be benefited, relief should be sought on its own merits. Another provision threatens to impair the defences of the city against fraudulent, irregular or illegal contracts.

On the whole, while regretting to lose the useful parts of the bill, I am unwilling, for the sake of the temporary advantages of them before the subject can be again acted upon, to impose its exactions or to incur the risks of confusion in the actual conduct of the public business of the metropolis."

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[h] Const. 1846, art. 3, § 16.

June 2.

Veto of Assembly bill, entitled "An act to legalize the proceedings of the annual town meeting of the town of Ontario, Wayne county, held March 7, 1876."

" This bill provides that notwithstanding certain irregularities said to have occurred at the town meeting held in the Town of Ontario, in 1876, in respect to the keeping of the poll list, and the canvassing of the votes, ' the result as declared by the Town Board shall be, and is hereby held to be, legal.'

If the bill only provided that the election of town officers for that town should not be invalidated by reason of any informality in the keeping of the poll list or the canvassing of the votes, I should have no hesitation in signing it, although I might think it unnecessary, as the Courts would probably hold that the statutory provisions regulating the manner of conducting town elections are directory and not mandatory.

But the bill seems to declare that the ticket which the Town Board decided to have been elected, was in fact elected.

This is clearly beyond the province of the Legislature. If the officers declared by the Board to have been elected, in fact received a plurality of the legal votes cast, they are the duly chosen officers of the town. If they did not receive such a plurality, the Legislature cannot place them or confirm them in office.[1] "

June 2.

Veto of Senate bill, entitled "An act in relation to the repair of certain streets in the city of Albany."

" This bill is identical with Assembly bill No. 229, which passed both houses of the Legislature and was approved by the Governor, April 22, 1876. It is unnecessary to reenact it."

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[1] Const. 1846, art. 10, § 2.

June 2.

Veto of Assembly bill, entitled "An act to authorize the appointment of an additional policeman in the city of Schenectady for the protection of the property of Union College."

"This bill authorizes the trustees of Union College to appoint a policeman for the City of Schenectady.

The Constitution (Art. 10, sec. 2) prescribes that 'All city, town and village officers, whose election or appointment is not provided for by this Constitution, shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof as the Legislature shall designate for that purpose.'"

June 2.

Veto of Assembly bill, entitled "An act to provide for the election of a police justice in the town of Watervliet, in the county of Albany."

"The 14th, 15th, 16th and 17th sections of this bill contain provisions relating to the sheriff, deputy sheriffs, constables, justices of the peace, and police commissioners, which are not indicated in the title of the bill; and as the bill is local, these provisions are within the inhibition of section sixteen of article three of the Constitution."

June 2.

Veto of Assembly bill, entitled "An act to establish a Board of Governors of the House of Industry, of the County of Rensselaer, and to provide for the care of the poor and insane in said county."

"The bill appoints, by name, twenty-nine persons governors of the House of Industry of Rensselaer County, who, in fact, supersede and are invested with the powers of the superintendents of the poor of that county.

There can be no doubt that these are county officers.

Under the Constitution, all county officers must be elected by the electors of the county, or appointed by the Board of Supervisors or other county authorities, as the Legislature shall direct.[1]

The Board of Supervisors, by resolution, protest against the approval of this bill."

June 2.

Veto of Assembly bill, entitled "An act providing for the assessment of real estate in the Town of Vienna, County of Oneida."

"The object of this bill seems to be to provide that where a farm is situated partly within and partly without the Town of Vienna, and the owner or occupant resides without the town, that portion of the farm lying within the town shall be assessed therein.

If this rule is a proper one to be adopted for that town, there is no reason why it should not be made applicable to the other towns in the State."

June 2.

Veto of Assembly bill, entitled "An act to amend section two of Chapter 890 of the Laws of 1868, entitled 'An act to authorize Lewis Runyon to establish a ferry across Seneca Lake, at Lodi landing."

"By the act of 1868, Lewis Runyon was authorized to establish a ferry across Seneca Lake at Lodi landing, by the 1st day of September, 1869, and upon the establishment first of such ferry all persons were prohibited from carrying persons, for hire, across that lake, within two miles of the ferry so established, under a penalty. The time for the establishment of such ferry has, by different Acts, been extended to the first day of September, 1875, and has now expired.

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[1] Const. 1846, art. 10, § 2.

This bill further extends the time until the first day of September, 1877, but provides that nothing in it contained shall be held to grant an exclusive privilege to maintain the ferry.

If the bill does re-enact the restrictive provisions of the act of 1868, it is unconstitutional, as granting to a private individual an 'exclusive privilege, immunity or franchise;[k] if it does not, it gives to the donee nothing which he does not already possess in common with every citizen of the State."

June 2.

Veto of Assembly bill, entitled "An act to legalize the proceedings of the town meeting, so far as the same relates to the election of highway commissioners, held in and for the Town of Alden, Erie County, on the first Tuesday of March, 1876."

"This bill undertakes in effect to declare that the person whom the Board of Canvassers decided to have been elected at a town meeting in the Town of Alden was, in fact, duly elected.

If there is any controversy upon that subject, it is one that should be settled by the courts. It is not within the province of the Legislature to decide as to the regularity of an election, or to adjudicate as to the candidate who was duly chosen."

June 2.

Veto of Assembly bill, entitled "An act to change the name of the Rochester and Pine Creek Railway Company."

"This bill is rendered unnecessary by the passage of chapter 280 of the laws of this year, so amending the General Act of 1870 as to authorize railroad companies to change their names in the manner and under the restrictions prescribed by that act."

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[k] Const. 1846, art. 3, § 18.

June 2. The omnibus veto included the following bills:

Assembly Bill No. 607. An Act to amend Act incorporating Peekskill Academy.

Assembly Bill No. 312. An Act to authorize sale of land for non-payment of taxes in Rockland and Delaware counties.

Assembly Bill No. 324. Authorize Treasurer of Monroe County to collect certain taxes.

Assembly Bill No. 327. Legalize State and County taxes in Cohoes.

Assembly Bill No. 263. To amend Act in relation to support of insane in Genesee county.

Assembly Bill No. 406. Relative to Cemetery at Port Byron.

Assembly Bill No. 635. For removal of bodies from burial ground in Norwood, St. Lawrence Co.

Assembly Bill No. 451. To prohibit interments of dead in First M. E. Burial Ground, at Carlton, Orleans Co.

Assembly Bill No. 432. Amend Act providing for instruction of Common School teachers.

Assembly Bill No. 597. Distribute School Tax from Southern Central R. R. among school districts of Town of Hartford, Cortland County.

Assembly Bill No. 561. For a fire department in Second School District of Glenville, Schenectady County.

Assembly Bill No. 639. To amend Act incorporating Village of Bath-on-the-Hudson.

Assembly Bill No. . To repeal Act for election of Police Justices in villages so far as relates to Greene County.

Assembly Bill No. . To amend Act incorporating village of Camden.

Assembly Bill No. 295. Concerning Notary Public in counties of Kings, Queens, Richmond, Westchester, Putnam, Suffolk, Rockland, and the City and County of New York.

Assembly Bill No. 407. Authorize Buffalo and Green Island Ferry Co. to increase capital stock.

Assembly Bill No. 449. For sale of real estate of the Western New York Agricultural Society.

Assembly Bill No. 131. Regulate voting in Western New York Agricultural Society.

Senate Bill No. 66. Amend Act for draining land adjoining Black Lake.

Senate Bill No. 65. Amend Act for draining over-flowed land adjoining Black Lake.

Senate Bill No. 95. Authorize a sewer along Beaver Creek, in Albany.

Senate Bill No. 287. For construction of an iron bridge over Clark and Skinner Canal, at Scott street, in Buffalo.

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